

U.S. NUCLEAR REGULATORY COMMISSION  
OFFICE OF INVESTIGATIONS  
INVESTIGATIVE PROCEDURES MANUAL

AUGUST 1999

The Office of Investigations' Procedures Manual, which was given interim approval by the Commission in a memorandum dated October 21, 1985, was initially revised in January 1989, and again with an effective date of August 1, 1996. This is the third revision, with an effective date of July 15, 1999. Please replace all previous versions and drafts of the manual with this revision and destroy the previous versions and drafts.

Portions withheld, EX. 5 and EX. 7E

## TABLE OF CONTENTS

	<u>Page</u>
<b>1. GENERAL .....</b>	<b>1</b>
1.1. Purpose of the Manual .....	1
1.2. Applicability of the Manual .....	1
1.3. Investigative Guidance Memorandum (IGM) .....	1
1.3.1. Content and Format .....	1
1.3.2. Preparation of Investigative Guidance Memoranda .....	1
1.3.3. Numbering of Investigative Guidance Memoranda .....	1
1.3.4. Review of Investigative Guidance Memoranda .....	2
1.3.5. Filing and Maintenance .....	2
1.3.6. Use of Electronic Mail (Email) for Immediate Requirements for Guidance .....	2
1.3.7. Use of Email for Changes or Corrections to an IGM .....	2
1.4. OI Manual Additions and Changes .....	2
1.4.1. Types of Changes .....	2
1.4.2. Sources of Changes .....	2
1.4.3. Review of Manual .....	3
1.4.4. Preparation and Distribution of Changes .....	3
1.4.5. Procedures for Maintaining the Manual .....	3
1.4.6. Transmittal Sheet for Manual Changes .....	3
1.4.7. Filing and Maintenance .....	3
1.5. Explanation of Terms .....	3
<b>2. RESPONSIBILITIES OF THE OFFICE OF INVESTIGATIONS .....</b>	<b>5</b>
2.1. Mission Statement .....	5
2.2. Authority .....	5
2.3. Jurisdiction .....	5
2.4. Code of Conduct for OI Personnel .....	6
2.4.1. Objectivity .....	6
2.4.2. Professionalism .....	6
2.4.3. Complaints of Possible Irregularities or Alleged Misconduct of OI Employees .....	7
2.5. Physical Readiness .....	7
<b>3. INVESTIGATIONS .....</b>	<b>8</b>
3.1. Initiation of Investigations .....	8

3.2.	Development of Investigations .....	8
3.2.1.	Procedures for Initiating Investigations .....	8
3.2.2.	Investigative Process .....	9
3.2.2.1	Opening an Investigation .....	9
3.2.2.2.	Evaluating the Initial Allegation .....	10
3.2.2.3.	Early Closure of Investigations .....	11
3.2.2.4.	Fully Developing an Investigation .....	12
3.2.2.5.	Distribution of Reports of Investigation .....	13
3.2.2.6.	Estimated Completion Dates .....	13
3.2.2.7.	Reflecting Delays in the Investigative Process Process .....	14
3.2.2.8.	Initial Priorities .....	15
3.2.2.9.	Supplemental Investigations .....	15
3.2.2.10.	Cases of Suspected Discrimination .....	15
3.2.2.10.1.	Conduct of Discrimination (H&I) Investigations .....	16
3.2.2.10.2.	Elements of Proof in Discrimination Cases .....	16
3.2.2.11.	Licensee Investigated Cases .....	16
3.2.2.12.	Investigative Assistance to the NRC Technical Staff .....	16
3.2.2.12.1.	Assistance with Potential Wrongdoing Issues .....	17
3.2.2.12.2.	Assistance to the Inspection or Regulatory Process .....	17
3.2.2.13.	Transferring Cases .....	18
3.2.2.14.	Collateral Investigations .....	18
3.2.2.15.	Administrative Closures of Cases .....	19
3.2.2.16.	Referrals to Department of Justice (DOJ) .....	19
3.2.2.16.1.	Authority for Oral Referrals .....	19
3.2.2.16.2.	Conclusions in Reports Referred to DOJ .....	19
3.2.2.17.	Petitions Under 10 CFR 2.206 .....	19
3.2.3.	Indications of Willfulness in Connection with Violations of NRC Requirements .....	20
3.2.5.	Standards of Investigative Thoroughness .....	21
3.2.6.	Witness Credibility and Veracity .....	22
3.2.7.	Case Inventory Management .....	22
3.3.	Termination of Investigations .....	23

<b>4.</b>	<b>INTERVIEWS</b>	<b>24</b>
4.1.	General	24
4.2.	Right of Interviewees to a Copy of a Transcript	25
4.3.	Miranda Warnings	25
4.4.	Administering Oaths or Obtaining Affirmations	26
4.4.1.	When to Administer an Oath or Obtain an Affirmation	26
4.4.2.	Procedures for Administering an Oath or Obtaining An Affirmation	26
4.5.	Subpoenas	26
4.5.1.	Authority	26
4.5.2.	Format of OI Subpoenas	27
4.5.3.	Use of the Subpoena	27
4.5.4.	Subpoena Coordination Process	27
4.5.5.	Service of Subpoenas	28
4.5.6.	Compliance with Subpoenas	29
4.6.	Exclusion of Third Parties from Interviews	30
4.7.	Tape Recording Investigative Interviews	31
4.8.	Joint Interviews Conducted by OI and Federal Statutory Offices of Inspectors General (OIG)	31
4.8.1.	Joint Interviews in General	31
4.8.2.	Joint Interviews under Compelled OI Process	31
<b>5.</b>	<b>DOCUMENTING OI INVESTIGATIONS</b>	<b>33</b>
5.1.	Documenting Investigations	33
5.2.	Preparation of the Report of Investigation	33
5.2.1.	Guidelines and Timeliness Requirements	33
5.2.2.	Allegor Identity in Reports	33
5.3.	Documenting NRC Civil Action Concluded During Investigations	33
5.4.	Case Chronology	34
5.5.	Statements	34
5.6.	Interviews Reports	35
5.7.	Transcribing Interviews	36
5.8.	Management Review of Interview Results	36
5.9.	Investigative Notes	37
5.9.1.	Method and Amount of Note Taking	37
5.9.2.	Retention of Notes	37

EX  
7E

5.10.	Retention of Draft Documents .....	37
5.10.1.	Active Freedom of Information Act (FOIA) and Privacy Act (PA) Requests .....	38
5.10.2.	"Personal" Copies of Drafts .....	38
5.11.	Disagreements Regarding Conclusions in Investigative Reports .....	38
5.12.	Case File Management .....	38
5.12.1.	Agent's Working File .....	40
5.12.2.	Retention of File Material in Individual Offices .....	40
6.	COLLECTION, CUSTODY, AND PRESERVATION OF EVIDENCE .....	41
6.1.	General .....	41
6.2.	Appointment and Duties of Evidence Custodians .....	41
6.2.1.	Primary Evidence Custodian .....	41
6.2.2.	Alternate Evidence Custodian .....	42
6.3.	Evidence and Property Processing .....	42
6.4.	Maintenance of Evidence .....	43
6.5.	Evidence Depository .....	43
6.6.	Inventories of Evidence .....	44
6.6.1.	Annual Inventories .....	44
6.6.2.	Changing Primary Evidence Custodians .....	44
6.6.3.	Inventories in Cases of Lost Evidence or Breaches of Security .....	45
6.7.	Final Disposition of Evidence .....	45
7.	ALLEGATIONS, ALLEGERS, AND CONFIDENTIAL SOURCES .....	46
7.1.	General .....	46
7.2.	Allegations .....	46
7.2.1.	Allegation Management System (AMS) .....	46
7.2.2.	Allegation Review Board (ARB) .....	46
7.3.	Allegers .....	47
7.3.1.	Protection of Allegor Identity .....	47
7.3.2.	Disclosure of Allegor Identity .....	47
7.4.	Confidential Sources .....	48
7.5.	OI Confidential Sources .....	48

7.5.1.	Categories of Sources of Information .....	48
7.5.2.	Handling of OI Confidential Sources by Special Agents .....	49
7.6.	Granting Confidentiality .....	49
7.6.1.	Authority to Grant Confidentiality .....	49
7.6.2.	Purpose of Grants of Confidentiality .....	50
7.6.3.	Granting of Confidentiality .....	50
7.6.4.	Disclosing a Confidential Source's Identity .....	54
7.9.	OI Confidential Source Information .....	57
7.10.	Confidential Source Control Officer (CSCO) .....	58
7.10.1.	Appointment and Responsibilities of the CSCO .....	58
7.10.2.	Field Office Confidential Source Records .....	58
7.11.	OI Confidential Source Identifiers .....	58
7.11.1.	Assignment .....	58
7.11.2.	Alpha-Numeric Codes .....	59
7.11.3.	Reliance on Source Identifiers .....	59
7.12.	Records .....	60
7.12.1.	Original Records .....	60
7.12.2.	Source Index .....	60
7.12.3.	OI Confidential Source File .....	60
7.13.	OI Confidential Source Contacts .....	61
7.13.1.	Rules of Contacts .....	61

7.13.2.	Documentation Requirements .....	61
8.	RELEASE OF INVESTIGATION INFORMATION .....	62
8.1.	Nuclear Safety and Security-Related Information Developed in an OI Investigation .....	62
8.1.1.	Notification Process .....	62
8.1.2.	Threshold for Notification of the FOD .....	63
8.1.3.	Notification of Action Offices of Deliberate Violations .....	63
8.2.	Release of Investigative Reports Outside NRC .....	63
8.2.1.	Final Reports of Investigation .....	63
8.2.2.	Purging Reports of Allegor Identification Prior to Release .....	64
8.2.3.	Referrals to Department of Justice (DOJ) and Other Agencies .....	64
8.2.3.1.	Method of Referral .....	64
8.2.3.2.	Post-Referral Investigation .....	65
8.2.4.	Release of Reports of Investigation to Licensees and the Public Document Room (PDR) .....	65
8.2.5.	Release of Reports of Investigation to Agreement States .....	66
8.3.	Forwarding Investigative Information to Other Law Enforcement Agencies .....	66
8.3.1.	Information Currently Under Investigation by OI .....	66
8.3.2.	Requests for Information from Outside-NRC Agencies .....	67
8.3.3.	Information Pertaining to Matters Not Under Investigation by OI .....	67
8.3.4.	Release of the Identity of Allegers .....	68
8.3.5.	Coordination Regarding Drug-Related Investigations .....	68
8.4.	Notifications to Licensees, Applicants and Their Contractors and Vendors of the Initiation, Conduct, or Termination of an Investigation .....	68
8.5.	Generic Letters to a Group of Licensees .....	69
8.6.	Contacts With the Media .....	69
8.6.1.	Open Investigations .....	69
8.6.2.	Other Matters .....	69
8.6.3.	Obtaining Information From the Media .....	70

EX.  
7E

8.6.3.1.	Information Volunteered by Media Representatives .....	70
8.6.3.2.	OI Initiated Media Contacts .....	70
8.7.	Obtaining Information From the U.S. Postal Service .....	70



	<u>Page</u>
APPENDIX A - SAMPLE DIRECTOR'S GUIDANCE .....	A-1
APPENDIX B - TRANSMITTAL SHEET FOR ADDITIONS TO OR CHANGES IN THE INVESTIGATIONS MANUAL .....	B-1
APPENDIX C - INSTRUCTIONS AND EXAMPLES OF INVESTIGATION STATUS RECORDS .....	C-1
APPENDIX D - SAMPLE CASE CHRONOLOGY .....	D-1
APPENDIX E - INSTRUCTIONS FOR PREPARATION AND EXAMPLES OF FULLY DEVELOPED CASE ROI FORMAT .....	E-1
APPENDIX F - INSTRUCTIONS FOR PREPARATION AND EXAMPLES OF EARLY CLOSURE/ABBREVIATED ROI FORMAT .....	F-1
[.....]	EX. 5 ATTN - Client
APPENDIX H - MEMORANDUM OF UNDERSTANDING BETWEEN THE NUCLEAR REGULATORY COMMISSION AND THE DEPARTMENT OF JUSTICE .....	H-1
APPENDIX I - EXAMPLES OF LETTERS OF REFERRAL TO DEPARTMENT OF JUSTICE .....	I-1
[.....]	EX - ATTN - Client
APPENDIX K - RIGHTS WARNING FORM .....	K-1
APPENDIX L - GUIDELINES FOR ADMINISTERING AN OATH OR OBTAINING AN AFFIRMATION .....	L-1
APPENDIX M - SAMPLE SUBPOENA .....	M-1
[.....]	EX. ME
APPENDIX O - FORMAT FOR WRITTEN STATEMENTS .....	O-1
APPENDIX P - FORMAT FOR INTERVIEW REPORT .....	P-1
APPENDIX Q - GUIDELINES FOR RESPONDING TO FOIA REQUESTS .....	Q-1
APPENDIX R - EVIDENCE ACCOUNTABILITY .....	R-1
APPENDIX S - NRC ADVISEMENT ON IDENTITY PROTECTION .....	S-1
APPENDIX T - CONFIDENTIALITY AGREEMENT .....	T-1

## **CHAPTER 1**

### **GENERAL**

#### **1.1. Purpose of the Manual**

This manual prescribes policies, procedures, and guidelines for the conduct of investigative activities of the Nuclear Regulatory Commission (NRC) Office of Investigations (OI).

#### **1.2. Applicability of the Manual**

This manual applies to OI Headquarters (OI:HQ), all subordinate offices, and all other OI elements (special teams or task forces) when conducting investigative activities within the responsibility of OI.

#### **1.3. Investigative Guidance Memorandum (IGM)**

##### **1.3.1. Content and Format**

These memoranda provide an ordered means for issuing guidance to Special Agents on a current basis without the formalities attendant to the issuance of an OI manual chapter, section, or paragraph. Such guidances may be only of interim importance. However, the guidance may also be material that once proven by trial use will be added to the Manual. The material may be continued from year to year as guidance or discontinued altogether. [This process is described in paragraph 1.3.4.] (The format of an IGM is illustrated in Appendix A.)

##### **1.3.2. Preparation of Investigative Guidance Memoranda**

Suggestions may be made to the Director or Deputy Director for material to be issued as guidance. These suggestions may be in the form of problems that need authoritative resolution or drafts of material for consideration. OI:HQ will prepare and, with the approval of the Director or Deputy Director, promulgate all final guidance issuances.

##### **1.3.3. Numbering of Investigative Guidance Memoranda**

A series is initiated each calendar year for numbering guidance issuances. Those issued in 1999 would be numbered sequentially, starting with 99-001. In 2000, they will start with 00-001. OI:HQ will assign the guidance numbers.

#### **1.3.4. Review of Investigative Guidance Memoranda**

The Deputy Director will cause a periodic review of all IGMs issued to date. An IGM could be:

- a. modified as necessary to become a manual addition or change,
- b. deleted because it is no longer needed, or
- c. carried forward to the next year, with the same number, as continuing guidance.

#### **1.3.5. Filing and Maintenance**

Investigative Guidance Memoranda are to be kept with the manual and are to be maintained up to date by all holders of the manual. Each IGM issued will have attached a current list by title and date of all active IGMs, which have not been discontinued or incorporated in the IPM.

#### **1.3.6. Use of Electronic Mail (Email) for Immediate Requirements for Guidance**

To respond to an immediate requirement for guidance, an IGM may be sent by OI:HQ to all manual holders by email, with a signed hard copy memorandum to follow.

#### **1.3.7. Use of Email for Changes or Corrections to an IGM**

To accommodate a change or correction in an issued IGM, email may be sent by the Director or Deputy Director to all manual holders. Such changes or corrections will be followed up by making pen and ink changes or corrections in hard copy memoranda on file with the manual holder.

### **1.4. OI Manual Additions and Changes**

#### **1.4.1. Types of Changes**

The manual can be changed by adding new material, revising old material, or making minor corrections to old material, by "pen and ink" changes.

#### **1.4.2. Sources of Changes**

Changes may be suggested by sources outside OI or even outside NRC. The Director may appoint a committee, as needed, to conduct a review and suggest revisions. In addition, any manual user may suggest revisions to the Director.

#### **1.4.3. Review of Manual**

The Deputy Director will cause a periodic review of the manual to incorporate any additions or changes, where and when appropriate.

#### **1.4.4. Preparation and Distribution of Changes**

Recommended changes will be prepared and submitted to the Director or Deputy Director. OI:HQ will distribute approved changes to manual holders.

#### **1.4.5. Procedures for Maintaining the Manual**

A change in the manual is accomplished by issuance of a new page (or pages) or instructions for making a "pen and ink" change on an existing page. The indication of a change is an asterisk and a footnote that gives the change number, which is sequential for any change or addition, and the date of the change. For a change of only one sentence, the asterisk follows the sentence; for a paragraph (or paragraphs or pages), an asterisk is placed at the beginning and the end of the change. Each holder of the manual is responsible for assuring that the copy held by him or her is up to date and accurate.

#### **1.4.6. Transmittal Sheet for Manual Changes**

A changed page (or pages) and added material are transmitted to all Manual holders with a transmittal sheet that is to be retained in a manual file. (The transmittal sheet is illustrated in Appendix B.)

#### **1.4.7. Filing and Maintenance**

Manual changes specified in the transmittal sheets are to be made immediately and the transmittal sheets kept for future reference in checking completeness of the manual. Replaced manual pages are to be discarded.

### **1.5. Explanation of Terms**

- a. **NRC Requirement**--This term as used in this manual will refer to NRC regulations, appropriate statutory provisions, license conditions, technical specifications, orders, or any other regulatory requirement the violation of which could lead to the imposition of enforcement sanctions.
- b. **Wrongdoing**--An act of wrongdoing is one in which an NRC requirement has been breached with some intent or purpose to

commit the breach, rather than through mistake or error. Wrongdoing consists of either (a) an intentional violation of regulatory requirements or (b) a violation resulting from careless disregard of or reckless indifference to regulatory requirements, or both.

- c. **Wrongdoing Investigation**--An investigation of suspected acts of misconduct which, if true, would meet the definition of wrongdoing above. An investigation will be initiated when an allegation or other set of circumstances, such as inspection results, identifies specific indications of wrongdoing, beyond mere potential.

## **CHAPTER 2**

### **RESPONSIBILITIES OF THE OFFICE OF INVESTIGATIONS**

#### **2.1. Mission Statement**

The NRC Office of Investigations (OI) develops policy, procedures, and quality control standards for the conduct of all NRC investigations of licensees, permittees, or applicants; of contractors or vendors of such entities; or of employees of the foregoing entities. OI conducts and supervises investigations within the scope of NRC authority except those of NRC employees and NRC contractors; assures the quality of investigations; maintains current awareness of inquiries and inspections by NRC offices to identify the need for formal investigations; makes appropriate referrals to the Department of Justice (DOJ); assists the DOJ in prosecution of criminal violations of NRC rules or regulations; keeps the Commission and involved NRC Offices currently apprized of matters under investigation as they affect public health and safety, the common defense and security, environmental quality, or the antitrust laws; and maintains liaison with other agencies and organizations to ensure the timely exchange of information of mutual interest. OI may commence appropriate investigative activity when a matter is brought to the attention of OI indicating that wrongdoing is suspected to have been committed by a person or entity within OI jurisdiction. Investigations may also be conducted of matters solely of character or integrity on direction of the Commission, as well as any matter within NRC jurisdiction that the Commission desires to be investigated.

#### **2.2. Authority**

The Commission has delegated to the Director of OI the authority to take the necessary steps to accomplish the OI mission, as described in Title 10 of the Code of Federal Regulations, Part 1, Section 1.36 (1998). See Section 161c of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2201(c)); and Sections 201(a)(2) and 206 of the Energy Reorganization Act of 1974 (42 U.S.C. 5841 and 5846).

#### **2.3. Jurisdiction**

OI investigative jurisdiction extends to the investigation of wrongdoing by licensees, applicants, or permittees, by contractors, subcontractors, vendors of such entities, and/or by management, supervisory, and other employed personnel of such entities who may have committed violations of the Atomic Energy Act, the Energy Reorganization Act, and rules, orders, and license conditions issued by the Commission thereunder. Section 161c of the Atomic Energy Act also authorizes OI to conduct such other investigations that the Commission may direct.

## **2.4. Code of Conduct for OI Personnel**

Each OI employee should understand and abide by the rules and regulations for the conduct of employees in accordance with 5 CFR Parts 2635 and 5801, and Management Directives 7.3 - 7.10.

### **2.4.1. Objectivity**

OI Special Agents must be free from impairments to objectivity in all matters relating to investigative work. Agents have the responsibility for maintaining independence and objectivity so that judgments used in obtaining evidence and conducting interviews will be impartial. To preserve this independence, agents shall not have nor give the appearance of having:

- a. preconceived ideas toward individuals, groups, organizations, or objectives of a particular program that could bias the investigation,
- b. biases that result from membership in, employment by, or loyalty to a particular group or organization that is being investigated,
- c. financial interest, direct or indirect, in the individual, entity, or program being investigated, or
- d. official, professional, personal, or financial relationships that might cause the Special Agent to limit the extent of the inquiry, to limit disclosure of information, or to weaken the investigative report in any way, or conversely, to cause the agent to extend the duration or scope of the investigation beyond that warranted by the objective facts associated with that endeavor. In other words, agents must strive to ensure that their activities are motivated solely by the merits of any investigation that they undertake.

### **2.4.2. Professionalism**

Special Agents are expected to exercise professional care in conducting investigations and in preparing related reports. Therefore,

- a. investigations must be conducted in a thorough manner in accordance with applicable laws, rules, and regulations, and with due respect for the rights of those involved,
- b. specific methods and techniques used in each investigation must be appropriate for the circumstances and objectives,
- c. investigations must be conducted in a fair and impartial manner,

- d. evidence must be gathered and reported in an unbiased and objective manner,
- e. investigations must be conducted and reported in as timely a manner as possible, and
- f. agents must be familiar with and proficient in the techniques and technology of the field of law enforcement and civil/criminal investigations, as well as the applicable laws, rules, and regulations.
- g. agents must at all times dress and conduct themselves in a highly professional manner.

#### **2.4.3. Complaints of Possible Irregularities or Alleged Misconduct of OI Employees**

The investigation of complaints regarding misconduct by OI employees falls within the jurisdiction of the NRC Office of the Inspector General (OIG).

An OI Field Office Director (FOD) will refer complaints or allegations of violations of 5 CFR Parts 2635 and 5801, and Management Directives 7.3 - 7.10 to the OIG for appropriate action by memorandum, through the Director or Deputy Director, OI. However, complaints or allegations against OI employees regarding investigative technique or coverage, as opposed to allegations of misconduct, will normally be evaluated and handled by OI management.

### **2.5 Physical Readiness**

Special Agents must be able to work long and irregular hours, occasionally under adverse or even hostile conditions. Because of these requirements, Field Office Directors should encourage physical fitness, wellness, and/or stress reduction programs tailored to individual agent needs and evaluation. It is recommended and should be encouraged that agents take an annual physical and share the results with the Field Office Director. Requests for specific fitness and/or stress testing can be accommodated through OI Headquarters, when appropriate on an individual basis, if evaluation indicates the need for such testing.



## CHAPTER 3

### INVESTIGATIONS

#### 3.1. Initiation of Investigations

The Commission has delegated the Director, OI, the authority to initiate investigations at the request of the Commission, the EDO, a Regional Administrator, the Director, NRR or NMSS, or on his own initiative. The Director, OI, has delegated authority to the Deputy Director, OI, and the Directors of OI Field Offices to initiate OI investigations within the procedural guidelines set forth in this section. Manual Directive and Handbook 8.8 (MD 8.8) sets forth the Commission's guidance regarding the initiation, establishment of priorities, and termination of investigations. It also provides that OI will be an active member of NRC allegation review boards with regard to all matters of potential wrongdoing.

#### 3.2. Development of Investigations

The process by which OI develops suspected wrongdoing matters and supports the NRC regulatory process requires that

- a. OI become involved in the development of suspected wrongdoing issues as soon as they are identified and reported.
- b. OI make a timely decision whether to fully develop an investigation, or to return the matter to the technical staff in order that they may proceed with regulatory action.

##### 3.2.1. Procedures for Initiating Investigations

OI investigations are initiated based upon allegations of wrongdoing received by the NRC staff from outside sources, or based upon suspected wrongdoing issues identified by NRC personnel during regulatory activities, such as inspections. In either case, these allegations or NRC findings are entered into the NRC Allegation Management System (AMS). OI will be notified of all allegations or findings where there is a suspicion of wrongdoing as soon as that suspicion is identified. It is recognized that virtually all allegations contain a potential for wrongdoing; however, *the threshold for opening a case is that the allegation contains specific indications of wrongdoing beyond mere potential*. The decision to open a case will be made by the Field Office Director (FOD). This decision will normally be made in conjunction with an Allegation Review Board (ARB) meeting.

There will be three basic documents around which an OI case is organized:

- (1) The Investigation Status Record (ISR), which opens the case and documents monthly progress (Reference Appendix C);
- (2) The Case Chronology, which records daily investigative and administrative activities (Reference Appendix D); and
- (3) The Report of Investigation (ROI), which is the OI written product documenting an investigation (Reference Appendix E).

Upon receipt of a potential wrongdoing allegation which reaches the threshold for opening a case, as previously defined, the following procedures will be followed by each field office:

- a. Log the allegation in a Case Log and assign an OI Case Number. The OI Case Number initially assigned will be the number carried throughout the life of the case.
- b. Open a hard copy field office case file and an electronic OI Management Information System (OIMIS) "case information" file under the assigned number for case management purposes.
- c. Prepare an ISR and forward it (through OIMIS) to OI:HQ, within 2 working days. The initial entry paragraph in the ISR will describe the purpose of the investigation, and the initial estimated completion date will be set at 90 days to reflect an initial evaluation period. The ISR will be prepared and forwarded in accordance with OIMIS guidelines .
- d. OI:HQ will open a case file for monitoring purposes upon receipt of the initial ISR.
- e. Notify the action office (RA, NRR, NMSS, etc.) of the case opening. This may be accomplished by sending them a copy of the initial ISR. The FOD should also ensure that the action office allegation coordinator is aware of the case opening.

### **3.2.2. Investigative Process**

#### **3.2.2.1. Opening an Investigation**

Potential wrongdoing allegations will normally be reviewed by an initial ARB with appropriate NRC staff participation to determine whether the circumstances, if correctly reported, would constitute

any regulatory violations and the potential safety significance of such violations. It is this type of information upon which the decision by the FOD to open a case will be based. When a case is opened, initial contact with an alleged will normally be made within 15 days. OI will normally interview or arrange for an interview of the alleged(s) within 30 days of the opening date. If there is no alleged in the case, the cognizant NRC staff personnel involved will be interviewed within 30 days. The interview or arrangements for it will be documented in the first full monthly ISR following the opening of the case.

#### **3.2.2.2. Evaluating the Initial Allegation**

To evaluate the initial information received, OI will simultaneously conduct internal coordination with the technical staff and other preliminary investigative activities. Alleged interviews, other initial interviews conducted, and related documentation will then be forwarded by memorandum to the technical staff for a detailed review of technical and safety issues to determine, at a minimum:

- a. If the developing circumstances are true, is there still an NRC-related violation.
- b. A realistic safety priority and regulatory need for the investigation upon which the FOD can base future allocation of OI resources.

By this point OI should be in a position to discuss the issue(s) with the technical staff and advise them of investigative results thus far. Coordination and analysis of the initial investigative results will routinely be accomplished at a second ARB, and the results recorded in the case file and the next monthly ISR.

The evaluative phase, which includes the initial alleged or cognizant staff interview(s), ARB meetings, and any other necessary preliminary interviews or records reviews should not exceed 90 days, except under unusual circumstances. Such unusual circumstances might include a case awaiting an Office of General Counsel decision, the results of an inspection essential to the investigative decision process, or an ARB to determine safety significance based upon results of an alleged interview.

After evaluation and staff coordination on safety/technical issues, the FOD will review the case with the assigned agent(s) and make a decision that:

- a. the case will be closed [*In which case the staff will be provided with a report containing all developed information and exhibits.*];
- b. more time is needed to evaluate and develop the potential wrongdoing issues before a decision can be made [*This might require scheduling another ARB meeting in 30 days to readdress the wrongdoing issues.*]; or
- c. the wrongdoing issue(s) developed warrant(s) further investigation, and OI is proceeding to fully develop the investigation.

The decision to close the case or proceed with further development will factor in priorities and resources, as well as the circumstances of the case. If the FOD decides to delay such a decision, the case and decision will be reviewed every 30 days thereafter.

The FOD will document these reviews and decisions, including the rationale behind them, in each monthly ISR, and record the activity in the Case Chronology. In addition, the decision to close or investigate further will be communicated to the staff, and that communication will be documented in the case file.

**NOTE:** While OI is evaluating wrongdoing allegation(s), the technical allegation review and tracking process should continue to ensure that any technical safety-related issues are addressed promptly. The investigation should not necessarily stop staff activities centering upon the technical/safety issues involved in the allegation. Unless it is an unusually sensitive or urgent wrongdoing issue, technical staff and OI activities should run either jointly or in parallel. They should complement each other.

### 3.2.2.3 Early Closure of Investigations

As mentioned, cases may be closed at the discretion of the FOD at various stages in case development. A FOD may authorize early closure of an investigation under the following circumstances:

- a. At or prior to the 90-day decision point, when
  - Coordination with the staff indicates that even if the circumstances surrounding the allegation were true, there would be no regulatory requirement/violation.

- Although evaluation of the surrounding facts and circumstances indicate sufficient evidence of wrongdoing to warrant further investigation, the priority of this matter is low and higher priority cases take precedence.
  - Although exhaustive investigative efforts might develop proof of wrongdoing, an evaluation of the evidence developed thus far has determined that the expenditure of additional resources does not appear warranted.
- b. Following a 90-day decision, but prior to fully developing the investigation, when

A FOD decides to pursue an investigation and later developments indicate that further investigation is no longer warranted. In such instances, the case may be closed. For example (1) based on new facts developed, the staff may reduce the investigative priority or (2) it may have become obvious that additional OI resource expenditures would not develop sufficient evidence to support wrongdoing having occurred in the first place.

c. Documenting Early Closures:

Early case closures for any of the above reasons will normally be reported on an abbreviated ROI. Examples of the early closure ROI format are attached at Appendix F. An updated and final monthly ISR will be completed within OIMIS, indicating the status as "closed," the closure date, the date of issue of the ROI, the closed action, and the reason for closure. The hard copy field office case file will then be closed. Upon receipt of the ROI and updated ISR at OI:HQ, copies of these documents will be placed in the Headquarters case file, which will then be closed.

#### 3.2.2.4. Fully Developing an Investigation

An investigation of a wrongdoing matter warrants full development if the following conditions are apparent immediately upon notification of the suspected wrongdoing or are demonstrated by initial investigative efforts:

- (1) There is a regulatory requirement,

- (2) The safety/investigative priority is sufficiently high in comparison to other priority cases, and
- (3) There is clear evidence of potential wrongdoing.

Having decided to pursue an investigation beyond initial investigative activities, the OI Field Office Director will accomplish the following:

- (1) Notify the cognizant NRC action office of OI's intent (by a brief memorandum or verbally at the ARB, with a note to file or a case chronology entry).
- (2) Submit an ISR to OI:HQ indicating the intention to continue the investigation by assigning a formal estimated completion date (ECD) at the completion of the initial 90 day period.
- (3) Report continuing investigative activities by submitting a monthly ISR containing an informative description of progress and status.
- (4) Fully develop an investigation in accordance with this manual and MD 8.8.
- (5) Document investigation results on a full format ROI as either substantiated or unsubstantiated.

#### **3.2.2.5. Distribution of Reports of Investigation**

OI cases for purposes of distribution will be categorized as substantiated and "all others," which includes unsubstantiated cases and cases closed early for various reasons, such as higher priority matters. The FOD may choose to reproduce and distribute signed substantiated cases, in accordance with Appendix E of this manual, or, the FOD can choose to make only regional/action office distribution. If this latter course is chosen, it will be communicated to OI:HQ, so that upon receipt of these cases, OI:HQ can reproduce and distribute any copies required by OGC, DEDE, NRR/NMSS (whether the action office or not), the Chairman, the Commissioners, etc. Specific distribution of investigation reports is addressed in detail in Appendix E.

#### **3.2.2.6. Estimated Completion Dates**

To facilitate case inventory management and appropriate resource allocation, it is important to place a realistic estimated completion

date (ECD) on investigations. The first ECD (3 months) will merely be a suspense date to trigger the 90-day evaluation period and will not count as an ECD for ultimate completion of the case. The first date change after the 90-day evaluation phase of the investigation will be the initial ECD for completing the investigation and issuing the report.

If an initial interview of an alleged results in a statement of interview or transcript requiring review by the technical staff to determine whether there is a violation and the technical safety significance of the violation (hence the priority), then both the 30 days to interview the alleged and the staff evaluation period will be a part of the 90-day evaluation process.

If a "90-day decision" is made earlier than 90 days, the next ISR thereafter will reflect a realistic ECD for completion of the case, with an explanation in the text of the ISR. This ECD will then be the first ECD counted for statistical purposes.

If the "90-day decision" cannot be made within 90 days, such as when awaiting a staff ARB evaluation or inspection, as soon as the 90 days are over, the next ISR will reflect: STATUS: PEN/UNSCHEDULED. The ISR text will explain why it is in a "PEN/UNSCHEDULED" status. Thereafter, as soon as it can be accomplished, a reasonable ECD will be established and it will then be the first ECD counted for statistical purposes.

#### **3.2.2.7. Reflecting Delays in the Investigative Process**

During the course of an investigation there may be lengthy delays during which an agent is unable for various reasons *within OI control* to continue the normal investigative process in a given case. An example would be an agent working full time on a higher priority case. Alternately, the case may be held in abeyance while awaiting an event *outside OI control*, such as an extensive inspection effort or completion of an activity of some other Federal agency. Under any of the described circumstances, continually changing an ECD is not appropriate, and the following procedures will apply:

- Where such delays are within OI control, the status entry on the ISR should reflect "PEN" (for "pending/unscheduled"). It should remain in this status until the case is once more being actively pursued. The next ISR after resumption of the investigation will reflect a reasonable ECD. When a 90-day decision is delayed, and PEN/UNSCHEDULED is used under these circumstances, there must be an explanation given in

the text of the ISR. These delays, because they are within OI control, will be classified as continuing OI activity for purposes of statistically accounting for the time it requires to complete an investigation.

- Where delays are outside OI control, the status entry should reflect "HIA" (for Held In Abeyance). Again, there must be an explanation of why the case is being held in abeyance in the text of the ISR. These delays, since they are outside of OI control, will not be counted for statistical purposes as OI activity toward completion of the case.

#### **3.2.2.8. Initial Priorities**

The initial priority of all OI investigations at the time of opening the case will be NORMAL, unless the technical staff has provided OI with a formal priority based upon analysis and review. Formal assignment of a priority will routinely be made after review of the matter by an ARB, in accordance with MD 8.8.

#### **3.2.2.9. Supplemental Investigations**

If a case has been closed and new information is surfaced warranting a supplemental investigation, such as new suspects or wrongdoing violations, the matter will be reopened as a new case, within the OIMIS "case information" file, but under the same OI Case Number, with an "S" as a suffix to the number. A new "start date" will be used for statistical accounting purposes. A new hard copy case file will be opened for management purposes, and a new ISR will be generated within OIMIS explaining the purpose for opening a supplemental investigation. In addition, the ISR for the original case shall be annotated to reflect the opening of the supplemental.

If there is a staff request for more information on the same case, such requests may be handled by a memorandum to the requester with the additional information attached, such as an interview report. [Note: Staff hours for such instances should be credited against the original case number, as either "field work" or "other."]

#### **3.2.2.10. Cases of Suspected Discrimination**

NRC investigations of suspected discrimination have traditionally been referred to as investigations of harassment and intimidation (H&I). All discrimination cases will be titled, "DISCRIMINATION AGAINST (Position Title), FOR (Issue involved) "



#### **3.2.2.10.1. Conduct of Discrimination (H&I) Investigations**

Cases involving suspected discrimination (H&I) for raising safety concerns will be handled in the same manner as all other wrongdoing issues. OI will pursue an investigation, make initial contact with an alleged normally within 15 days, interview or arrange for an interview of the alleged(s) normally within 30 days of the opening date, and make a decision at or before 90 days to close or continue, as described earlier in this chapter. OI will normally conduct initial investigative activities, even if the alleged has already filed a complaint with Department of Labor (DOL). Initial investigative activities, including the alleged interview, will be factored into the 90-day decision. The FOD and case agent should discuss cases involving OI substantiated H&I issues with DOJ as early as appropriate so that a prompt DOJ declination, if warranted, can be effected, thus allowing information acquired by OI to be used as necessary in the DOL process. Further, agents should contact DOL on a case-by-case basis, where warranted, to share information and minimize duplication of effort where parallel investigations are being conducted.

#### **3.2.2.10.2. Elements of Proof in Discrimination Cases**

The elements of proof necessary to substantiate a discrimination case are contained in Appendix G.

#### **3.2.2.11. Licensee Investigated Cases**

Occasionally allegations are received which have already been investigated by a licensee prior to their receipt by the NRC. In these instances, OI will review the licensee investigation report for objectivity, thoroughness, and accuracy, and will make a determination if opening a separate investigation is warranted. OI may choose to conduct interviews, review records, or conduct its own investigation. As with other cases, OI will coordinate with the technical staff to decide if further wrongdoing investigation is required to satisfy NRC regulatory needs. All such cases, even if substantiated, may be closed on an abbreviated ROI format. An example of such a closed ROI is attached at Appendix F.

#### **3.2.2.12. Investigative Assistance to the NRC Technical Staff**

There are two types of assistance to the NRC staff: (1) assistance with the development of potential wrongdoing issues, and (2) assistance to inspection efforts or in the regulatory process. When

such requests are made for OI assistance, the following procedures will apply:

**3.2.2.12.1. Assistance with Potential Wrongdoing Issues**

There are occasions when the information available regarding an issue does not reach the threshold for opening a case described in paragraph 3.2.1 of this manual, yet the technical staff has sufficient concern regarding the matter to request OI assistance in developing any potential wrongdoing. In these instances, OI will open a case number as an assist to the staff in conducting interviews or record reviews. An "A" will be added as a suffix to the case number for tracking and retrieval purposes. OI will proceed with investigative activities. If an early closure is warranted without a full investigation, the case may be closed by an abbreviated ROI, in accordance with paragraph 3.2.2 of this manual, or by memorandum. On the other hand, such a case may be investigated fully to a conclusion on the merits of the evidence, without changing the case number or dropping the suffix. Whether closed early or after a full investigation, the results of these cases will be statistically recorded as either "substantiated" or "unsubstantiated."

**3.2.2.12.2. Assistance to the Inspection or Regulatory Process**

There are also occasions when the technical staff requests OI investigative skills in assisting in inspections or other regulatory activities, absent any suspicion of wrongdoing. Such instances would occur when:

- a. the use of investigative skills such as "interview techniques" are important to the completion of an inspection, or other regulatory activity, and,
- b. the inspection/regulatory activity has a sufficiently high degree of potential impact on public health and safety to warrant the use of OI resources.

Each such request, under paragraph 3.2.2.12.2, is subject to approval by the FOD. Approved requests will be logged and given an OI case number with the suffix "F," for administrative tracking purposes. A case file will be opened and maintained generally in accordance with this manual, including a case chronology. An initial ISR and a closing updated ISR will be

sufficient to document the assistance within OI channels.  
[Note: Such an "assist" may be opened and closed on the same ISR]

Upon completing the assistance, a memorandum (or email) describing the results of OI activity will be provided by the FOD to the requesting office. The FOD will provide a copy to OI:HQ for filing. If an OI wrongdoing case results from this type of assistance in an inspection, the assist will be closed administratively with that notation in the closing ISR. A new wrongdoing case number will be opened making reference to the "assist to inspection." The initial ISR of the newly opened case will describe the change in status to a wrongdoing investigation and the circumstances causing the change.

#### **3.2.2.13.     Transferring Cases**

Cases transferred to another field office will be closed in the originating office by an abbreviated ROI in the format of an early closure with the reason stated as, "Transferred to OI Field Office, Region \_\_\_\_\_, for investigation." A copy of the ROI will be forwarded to the receiving office. The receiving office will treat the matter as an incoming allegation by assigning a case number, opening a file, initiating an ISR, incorporating the concern into the region allegation tracking system through the allegation coordinator, etc. If there is an alleged or cognizant staff person who has not been interviewed, the same time limits and documentation requirements as stated earlier in this chapter will apply.

#### **3.2.2.14.     Collateral Investigations**

A collateral investigation will be conducted when one field office requests another field office to accomplish investigative activities, such as interviews, in furtherance of the requesting office's case. In such cases the receiving office will initiate an ISR under the requesting office's case number with a suffix added. The suffix will be the letter "C," followed by the number of the receiving region field office. For instance, if Region 3 receives a lead to complete for a Region 4 case, the collateral case number would read, as an example, 4-1996-024C3. Upon completion of the request, the receiving office will close the ISR, and document their activities in an abbreviated ROI, to be forwarded to the requesting office only. An example of the format for this ROI is in Appendix F. Only the initial and closing entries are required in the ISR of the receiving office.

#### **3.2.2.15. Administrative Closure of Cases**

Strictly "administrative" closures are authorized where warranted. These are closures for purely administrative reasons, such as a case which was given an erroneous case number or was opened by administrative error. Such administrative closures will be accomplished by a simple memorandum, copy to OI:HQ, describing briefly the administrative reason for closure.

#### **3.2.2.16. Referrals to Department of Justice (DOJ)**

In keeping with the Memorandum of Understanding (MOU) with Department of Justice (Appendix H), OI will normally refer a matter to DOJ upon completion of a substantiated investigation.

##### **3.2.2.16.1. Authority for Oral Referrals**

Cases may be referred orally to expedite the process where deemed appropriate. OI will monitor DOJ for a prosecutorial commitment or declination on those substantiated cases referred in writing. The method of referral is described in paragraph 8.2.3.1, of this manual.

##### **3.2.2.16.2. Conclusions in Reports Referred to DOJ**

OI will prepare reports of investigation which include OI's summaries and conclusions for transmission to agency decision-makers. In the event that OI receives a Department of Justice request not to transmit such material for a case sent for prosecutorial review, OI will bring the matter to the Commission's attention. Such requests will be considered on a case-by-case basis.

#### **3.2.2.17. Petitions Under 10 CFR 2.206**

Allegations submitted by petition under 10 CFR 2.206 present a unique challenge in the investigation of wrongdoing. A wrongdoing investigation is necessarily a sensitive and less-than-public process, while the 2.206 petition brings safety concerns forward in a public process, which requires that all parties, including licensees, be notified of the receipt of the allegation and be kept informed of its disposition. When allegations presented through the 2.206 process involve wrongdoing issues, a delicate balance of these interests must be maintained to accommodate the 2.206 process, and its underlying premise, as well as the wrongdoing investigation, which should not be unnecessarily impeded. Allegations submitted by

petition under 10 CFR 2.206 which involve suspected wrongdoing will be handled in accordance with NRC MD 8.11.

### **3.2.3. Indications of Willfulness in Connection with Violations of NRC Requirements**

The agent should determine the specific elements which constitute each possible violation. The objective is to separate the alleged violations into component parts so that the agent can focus investigative efforts on any acts of commission or omission which would constitute wrongdoing. Furthermore, the agent should explore those possible acts, documentation or circumstances which could either prove or disprove that such violation was committed knowingly and deliberately. The following list provides several factors to consider in attempting to identify whether an alleged or suspected violation was willful. This list is not all-inclusive due to the varying nature of the violations surfaced in OI investigations. Among the possible indicia are:

- a. Prior knowledge of the requirements by responsible personnel. This may be established circumstantially by demonstrating an individual's expertise in the nuclear industry, his/her position, and level of responsibility within the organization;
- b. Documentation showing prior knowledge of wrongdoing and failing to report;
- c. Being placed on notice of noncompliance from some source and failing to take corrective action;
- d. A record of some past similar experience indicating that the licensee, entity, or individual knew the act was wrongdoing, yet proceeded regardless;
- e. Documentary or testimonial evidence negating the possibility that the violation resulted from accident, worker carelessness, ignorance, or confusion;
- f. Attempts at deception by a licensee or contractor, such as
  - selective reporting of relevant information to the NRC,
  - failure to record/document reports of noncompliance,
  - efforts to contain, divert, or stop information from reaching NRC,

- efforts to segregate, isolate, transfer, fire, intimidate, or otherwise retaliate or discriminate against alleged surfacers or attempting to surface information of interest to the NRC, or for providing safety-related information to employers, and
- manipulation of documentation to confuse or hinder investigation/inspection efforts by NRC;
- g. Documentation or testimony directly demonstrating that licensee management knew an act was wrong and against NRC requirements, but proceeded regardless;
- h. Evidence of acts committed in the name of "expediency," with later claims that the commission was a result of confusion on the part of the licensee; and
- i. Falsification of documents.

As indicated above, the foregoing are intended to assist the agent in identifying or demonstrating willfulness. They are indicia, to be used by the agent in determining whether a reasonable basis for wrongdoing exists. The presence or absence of any one of the above factors is not in itself sufficient to arrive at a conclusion regarding willfulness.

### 3.2.5. Standards of Investigative Thoroughness

OI conducts investigations to determine whether there was a willful breach of an NRC regulatory requirement. The results of such investigations are normally used as the basis for NRC regulatory actions such as licensing decisions or enforcement actions. Consequently, to fully develop an investigation, the Special Agent should pursue relevant investigative leads in enough detail and depth to provide NRC decision-makers sufficient information to make an informed enforcement decision which can be supported in a civil regulatory enforcement hearing. It is particularly important for agents to gather as much information as possible regarding the elements of proof of the willfulness of violations uncovered during investigations as this issue is of great importance to the regulatory process.

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To the extent an investigation demonstrates that wrongdoing was in fact committed, it will also normally meet the standard of proof to demonstrate that a criminal statute has been violated and must be referred to DOJ. Agents should complete an investigation with sufficient depth to satisfy the regulatory needs of the NRC foremost, but also potential DOJ prosecutorial requirements. Thus, fully developed investigations normally will continue until sufficient information has been gathered to prove or disprove the issue of wrongdoing.

It is useful to discuss briefly the standard of proof generally used by the NRC in its regulatory actions and its relationship to the investigation. The normal level of proof for civil enforcement is a "preponderance of evidence" as opposed to the criminal standard of proof "beyond a reasonable doubt." In lay terms, it requires more evidence to prosecute using the criminal standard than it does to pursue an enforcement action using the civil standard. In practical terms, however, it has little bearing on a decision as to when to terminate an investigation.

In practice, it is difficult enough for the courts, let alone an agent, to discern sharply between the quanta of evidence needed for either standard. Consequently, OI agents should not concern themselves during investigations with the distinctions between levels of proof. Rather, to fully develop an investigation, it should be conducted in accordance with existing standards of thoroughness and objectivity, with a view toward collecting evidence available through the investigative process that tends to prove or disprove the wrongdoing that is being investigated. When an agent is confident he or she has gathered the evidence necessary for the objective adjudication of the matter, the investigation should be terminated. OI managers will be responsible for monitoring this process to ensure that OI investigations continue to provide sufficient information to support NRC's regulatory needs and DOJ's prosecutorial requirements.

#### **3.2.6. Witness Credibility and Veracity**

Agent impressions regarding witness credibility and veracity generated through observation of the witnesses will be conveyed orally to those making the decision on whether there is sufficient evidence to pursue enforcement action, and/or to DOJ, as appropriate. Agents will not be asked to document these impressions in writing.

#### **3.2.7. Case Inventory Management**

The Special Agent has the responsibility to follow through with the development of identified leads. The Field Office Director has the responsibility to conduct a review of the progress of ongoing cases, at least monthly; focus the direction of investigative efforts with the agent;

and anticipate necessary and justified adjustments to ECDs. This review will be documented in the case chronology in the case file and should complement the progress reported in the monthly ISR. In addition, the Field Office Director will ensure that agents are working multiple high priority cases simultaneously.

Field Office Directors will normally complete their final review and issue final ROIs from the Field Office or forward them to OI Headquarters for further review within 15 working days of completion of the final draft of the report. OI Headquarters will normally review, process, and issue reports within 45 working days of receipt from the field.

### **3.3. Termination of Investigations**

MD 8.8 contains guidance regarding the criteria for termination of investigations. All OI personnel are to comply fully with this guidance. This directive does not preclude appropriate assistance by OI or technical staff to the Department of Justice in furtherance of a criminal investigation under DOJ auspices after completion of the OI investigation report.

It is important for Field Office Directors to establish realistic and appropriate estimated completion dates to facilitate case inventory management. However, no investigation will be terminated to meet an ECD when there are still undeveloped leads which, in the opinion of the Field Office Director, would be necessary to meet professional investigative standards. In such cases the ECD will be adjusted prior to reaching it.



## CHAPTER 4

### INTERVIEWS

#### 4.1. General

Interviewing is the primary method of obtaining evidence and investigative leads. In conducting interviews the following guidelines apply:

- ☐ All interviews will be conducted in a fair and impartial manner with the objective of obtaining the most accurate, relevant, timely, and complete information from the source.
- ☐ As a general rule, agents attempting to schedule interviews will approach the interviewee directly, rather than through an intermediary or counsel, and offer to conduct the interview away from the licensee's premises.
- ☐ The agent shall fully identify himself/herself at the start of the interview.
- ☐ If counsel, who is representing other parties or has a connection with the licensee as well, is present for an interview, the agent will pose a series of questions to both the interviewee and counsel regarding the issue of representation, ensuring that the interviewee understands the situation involving dual representation, and also understands that he/she has the right to a private interview with the NRC if so desired.
- ☐ The agent will obtain pertinent identifying data from the interviewee including, but not limited to full name, personal/business addresses, and occupation.
- ☐ The agent will document all interviews in the appropriate OI reports, and no agent will intimate or state otherwise to the interviewee.
- ☐ Where personnel, financial, time, and/or geographic considerations preclude personal interviews, telephonic interviews may be conducted, provided that all necessary information can be obtained through this method. Telephonic interviews must be clearly identified as such in the ensuing interview report.
- ☐ Ideally, interviews should be conducted by two agents; however, the realities of resource constraints will generally result in interviews being conducted by one agent. Notwithstanding resource constraints, two agents should conduct the interview when there is a reason to believe that the interviewee may be: (1) hostile; (2) believed likely to provide false or perjured information; (3) the target of an investigation; (4) in a location or

under conditions where the agent could be in danger; or (5) considered dangerous.

- ☐ When specific technical expertise is required for the interview, or when otherwise deemed appropriate due to other unusual circumstances, an agent may be accompanied by another NRC employee, whether or not that person is an OI Special Agent.

#### **4.2. Right of Interviewees to a Copy of a Transcript**

Requests for a copy of a transcript will normally be denied at either a voluntary or compelled interview because of the potential impact of such releases on pending investigations. OI will decide, case by case and based upon the Administrative Procedures Act (APA), whether to honor requests for copies. Normally a copy will not be provided until the completion of DOJ and/or NRC action.

Requests by interviewees to review transcripts for errors will be honored. Such reviews should be conducted by the witness and not merely reviewed by their representative or attorney. Routinely, these requests may require from 4 - 6 weeks in response, to allow OI to interview other pertinent witnesses and remain reasonable in the timeliness of responding to such requests.

There should be a sense of fairness in facilitating reviews of transcripts. They should be made available at any region. As a general rule, OI should be present at these reviews.

#### **4.3. Miranda Warnings**

Miranda warnings are the warnings required to be furnished to criminal suspects by arresting police officers under the Supreme Court decision of *Miranda v. Arizona*, 384 U.S. 436 (1966) and related rulings. The question arises whether an agent should give these warnings to persons whom they interview because those persons may have violated criminal statutes as well as NRC regulations.

Miranda warnings will not be furnished by OI Special Agents to persons interviewed during the course of OI investigations unless (1) the interviewee is in custody or (2) the Director/Deputy Director, OI directs that such warnings be given because of some special circumstance. A person is in custody if incarcerated, under arrest, or otherwise significantly deprived of freedom for any reason, even if it is not related to the matter being investigated.

Any questions regarding the issue of Miranda warnings that arise during an investigation should be directed to OI Headquarters for resolution. In those instances where agents furnish Miranda warnings, the format at Appendix K is used. Completion of this form is self-explanatory.

Agents will normally not advise persons in noncustodial interviews that they may be represented by counsel. However, interviewees do have the right to have counsel if they wish. Agents will not tell individuals being interviewed that they cannot employ personal counsel for consultation and/or attendance at such interviews.

#### **4.4. Administering Oaths or Obtaining Affirmations**

The Commission has the authority to administer oaths and obtain affirmations in connection with its investigations. That authority has been delegated to the Director, OI, and redelegated to all agents. [See Section 161c of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(c)].

##### **4.4.1. When to Administer an Oath or Obtain an Affirmation**

The point at which an oath is administered depends upon the circumstances surrounding the interview. As a general rule, it is more advantageous to complete the interview and obtain as much information as possible before administering the oath or obtaining affirmation. However, there may be instances in which it would be beneficial to place the individual under oath before the interview. The agent must judge each situation accordingly.

##### **4.4.2. Procedures for Administering an Oath or Obtaining an Affirmation**

The guidelines for administering oaths and obtaining affirmations are located at Appendix L.

#### **4.5. Subpoenas**

Most investigations are accomplished without the need for compulsory process, because most interviews and evidence are given voluntarily. When individuals or entities fail to cooperate, OI may compel the attendance and testimony of witnesses and/or the production of evidence by subpoena.

##### **4.5.1. Authority**

NRC is authorized to issue subpoenas in support of investigations. That authority has been delegated to the Director, OI, and redelegated to the Deputy Director, OI, and Field Office Directors (See SECY-94-070). Field Office Directors are required to coordinate with the Office of General Counsel and to notify OI:HQ prior to their issuance of subpoenas. [See Section 161c of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(c)].

#### **4.5.2. Format of OI Subpoenas**

A sample subpoena format has been provided at Appendix M as guidance in completing subpoenas. OI elements will use this format.

#### **4.5.3. Use of the Subpoena**

OI can issue subpoenas to compel the attendance and testimony of witnesses or the production of physical and/or documentary evidence or both. OI will not use subpoenas in situations where voluntary cooperation is readily obtainable through reasonable accommodations such as scheduling interviews at mutually convenient times and places. Special Agents must not accommodate persons or entities to the point of compromising investigations. Normally, agents will not request a subpoena until cooperation has been refused. However, in exceptional cases (e.g., where evidence may be tampered with or where a high probability exists that the agent's request will be refused) OI may issue subpoenas before cooperation has been refused.

There are several general limitations on the use of subpoenas. Subpoenas must be issued in good faith, and the information sought by the subpoena must be relevant to the OI investigation. Moreover, the subpoena must be reasonable. This means that the time and place of interview must be reasonable, any demand for documents or other tangible evidence must be reasonable, and the subpoena must describe the information sought with reasonable particularity. It is the responsibility of the FOD to ensure that the issuance of subpoenas adheres to these limitations.

#### **4.5.4. Subpoena Coordination Process**

The issuing official will coordinate subpoenas with OGC prior to issuance. If required by the cognizant OGC attorney, a memorandum and draft subpoena will be provided. If required, the memorandum coordinating the subpoena should address items such as:

- a. details of the situation and need for the subpoena; i.e., the refusal of the person or party to cooperate,
- b. the information or documentation desired,
- c. coordination with the NRC staff to determine that the desired information/documentation is not already available within NRC,
- d. what other means are available to obtain this information,
- e. the need for personal service if service by mail is not desired,

- f. the address of the individual or entity to be served with the subpoena, and
- g. a return date with sufficient and reasonable lead time.

When a written memorandum coordinating the subpoena is not required by the cognizant OGC attorney or is not practical because of time constraints or other case-unique problems, the agent may request a subpoena by telephone from the FOD. This will shorten the processing time considerably. In these expedited instances, the issuing official should coordinate by telephone with OGC prior to issuance and provide a record copy of the subpoena to OI:HQ.

#### **4.5.5. Service of Subpoenas**

After subpoenas are issued, a copy of the original should be delivered to ("served upon") the person or legal entity named in the subpoena. Subpoenas must be served in a particular manner to ensure enforceability in court. OI subpoenas may be served either by mail (certified or registered with "restricted delivery" and "return receipt requested") or by personal delivery, thereafter attested to on the original signed subpoena by the person making delivery.

OI will routinely use mail to serve subpoenas unless there are reasons for preferring personal service, such as insufficient lead time or evasion of mail service. Subpoenas to be served by mail will normally be dispatched via certified mail. Delivery will be restricted to the person or job function/title named on the subpoena. An additional copy of the original signed subpoena may also be sent to the named person or entity by regular mail channels.

If it is determined that personal service is warranted, the subpoena is served in the following manner:

- a. Service upon an individual is made by personally delivering a copy of the original signed subpoena to that person. Such service may be made by any person not less than 18 years of age.
- b. Service upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, is made by personally delivering a copy of the original signed subpoena to an officer, to a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process.

- c. Normally, such service will be made by an NRC or other Federal employee. OI Headquarters must approve the use of a non-Federal employee.
- d. Care should be taken to ensure that anyone serving a subpoena is aware of the procedures necessary to effect proper service.

In order to complete the procedure for service of a subpoena, proof of the service is provided to the OI Director, Deputy Director, or FOD who authorized the subpoena. Service may be documented in two ways: by the acknowledgment of the person served or by the certification of the person making personal service. Whenever practical an acknowledgment should be obtained. The U.S. Postal Service receipt will serve as the acknowledgment for a subpoena sent by certified or registered mail with restricted delivery, because only the addressee is permitted to sign for such mail. The signed return receipt should then be affixed to the original signed subpoena for retention in the case file. Receipt of subpoenas that are personally served may be acknowledged on the back of the original signed subpoena by the person serving the subpoena. Whenever an acknowledgment cannot be obtained, the person serving the subpoena shall establish proof of service by executing an affidavit on the back of the original signed subpoena. The affidavit will identify the person served and the date and place where served. These acknowledgments should also be retained in the case file.

#### **4.5.6. Compliance with Subpoenas**

The agent will meet the person named in the subpoena at the designated time and place. If the subpoena requires the production of either physical or documentary evidence, the original of the evidence must be produced, unless the subpoena specified that a copy (as in the case of documents) would be acceptable. A person compelled to submit documentary evidence is entitled by law (5 U.S.C. 555(c)) to retain a copy of such evidence. If the subpoena requires the named person to appear and testify, the interview will be conducted in the normal manner. However, compelled interviews should be transcribed by use of a court reporter, or be tape recorded unless there are circumstances mitigating against this recordation (such as a so-called "friendly subpoena"). It is not necessary to have an NRC attorney attend these interviews, although such assistance may be appropriate under some circumstances. Agents should normally be accompanied at such interviews by at least one other Government employee.

A person compelled to provide testimony is entitled by law (5 U.S.C. 555(c)) to obtain a copy of the results of such testimony. However, for good

cause, the person may be limited to inspection of the testimony during the pendency of the investigation.

A person compelled by subpoena to testify to OI is entitled by law (5 U.S.C. 555(b)) to be accompanied, represented, and advised by counsel or other personal representative (see paragraph 4.6, this manual). This right is subject to the limitation that under certain circumstances it may be possible that counsel representing another party at interest could be excluded (see paragraph 4.6., this manual). In that event, the interviewee is entitled to secure other counsel.

As in noncompelled interviews, the interview is conducted by the agent, not the interviewee's counsel. Interviewees must answer the agent's questions directly--not through counsel. The interviewee's counsel may clarify procedural matters, or explain the basis for any refusal to answer specific questions. Counsel, however, may not examine the interviewee.

An interviewee may not refuse to answer a question because the answer would be personally embarrassing, adversely affect a friend, cause him/her to lose a job or license, or reveal trade secrets or confidential information. Only an interviewee may invoke any of the testimonial privileges recognized by Federal law; e.g., self-incrimination. When the privilege asserted is the privilege against self-incrimination, a special procedure is available to compel the otherwise privileged testimony upon the grant of "use immunity."

The agent must report to the FOD any refusal to produce evidence or answer questions in compelled interviews. The agent may at his/her discretion, either suspend the interview upon encountering such a refusal or continue with other areas of questioning and contact the FOD thereafter.

#### **4.6. Exclusion of Third Parties from Interviews**

Investigative interviews should be conducted under conditions that enhance the agent's ability to ensure that NRC obtains full, complete, and accurate information.

Individuals being interviewed will be permitted to have a personal attorney or other personal representative present during interviews. However, if the personal attorney or representative also represents another potential interviewee or the company being investigated, the agent should ask questions of the interviewee on the record intended to develop information to assist in making a determination for exclusion, based on the "concrete evidence rule" or conflict of interest grounds. OI Headquarters and/or the Office of General Counsel should be contacted and a case-by-case determination should be made whether to exclude the personal attorney or representative. Once a decision has been reached to exclude the attorney or personal representative, he or she should be asked to

leave the place where the interview is being conducted. If he or she refuses to leave, then the interview should be discontinued, unless the agent believes that the need to conduct the interview outweighs the disadvantages of allowing the attorney/personal representative to remain. Special Agents will not resort to physical force or threats to remove such unwanted third parties.

Normally, OI will not permit other third parties, such as licensee management or union stewards, to be present during interviews.

#### **4.7. Tape Recording Investigative Interviews**

An interviewee normally will not be allowed to tape record an interview. If, however, in the judgment of the agent allowing such taping may facilitate the interview, it may be recorded provided that the taping is done by the NRC.

Although the interviewee ultimately has the right to a copy of the tape in the same manner as he or she would in the case of a transcript or written statement provided by them, the timing of the release of it to the interviewee is at the discretion of OI [see paragraph 5.5. of this manual regarding release of statements]. If release could interfere with the course of the investigation; it should be withheld until the investigation is completed.

Occasionally, an interviewee may insist on either taping the interview or receiving a copy of the NRC-produced tape immediately as a condition for permitting the interview. Such demands will be dealt with on a case-by-case basis. The agent normally should terminate the interview, but may proceed under such conditions if he or she is reasonably confident that any potential damage to the investigation is outweighed by the benefits of conducting the interview under such circumstances. If it is decided to allow an interviewee to tape record an interview, then the agent should also tape record it.

#### **4.8. Joint Interviews Conducted by OI and Federal Statutory Offices of Inspectors General (OIG)**

##### **4.8.1. Joint Interviews in General**

OGC guidance is specific regarding joint interviews. At the commencement of any interview conducted jointly by OI and OIG agents, appropriate, complete and correct identification of all participants will be provided to the witness and made part of the record.

##### **4.8.2. Joint Interviews under Compelled OI Process**

Under current OGC guidance, during interviews conducted by OI under an OI subpoena, an OIG agent may be present, but should not actively participate. Prior to the interview, OI and OIG agents should review the



questions and areas the OI agent intends to pursue. If the OIG agent recommends additional questions, and OI agrees that they are within the scope of the legitimate area of OI inquiry, these questions will be asked exclusively by the OI agent.

In the course of the interview, there should be no interaction regarding new or follow up questions between the OI and OIG agents. This includes whispered exchanges, notes, or off-the-record interruptions. At the end of the OI interview, the OI agent will advise the interviewee that the interview conducted in response to the OI subpoena has ended. If a court reporter is transcribing the compelled testimony, the reporter will be dismissed. The burden should then be on the OIG agent rather than OI to ensure that subsequent discussion with the witness by OIG is voluntary.

If there are additional questions by OIG and they pertain to the OIG investigation, the OI agent(s) will not remain in the interview location.

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## CHAPTER 5

### DOCUMENTING OI INVESTIGATIONS

#### 5.1. Documenting Investigations

The results of all OI investigations are documented in a Report of Investigation (ROI). The ROI is the principal OI product which is furnished to other NRC components, and, where applicable, to DOJ. When appropriate, OI will make the ROI available for release to alleged, licensees and to the public after deletion of exempt material and in accordance with MD 8.8. The ROI must be written in sufficient detail to assist NRC officials having cognizance over the matter investigated to arrive at an informed decision regarding regulatory action or for DOJ to pursue criminal prosecution. An ROI will be forwarded to the NRC action office by a letter of transmittal outlining briefly the purpose of the investigation and its conclusions. Although referrals may be made to DOJ by oral presentation, matters which are referred to DOJ, in writing, will be forwarded by a letter of referral (see Appendix I).

#### 5.2. Preparation of the Report of Investigation

##### 5.2.1. Guidelines and Timeliness Requirements

Guidelines for the preparation of an ROI and samples of such reports are at Appendix E and Appendix F. Final drafts of Reports of Investigation should be submitted by the case agent to the FOD under normal circumstances within 30 days of completion of the field work.

##### 5.2.2. Alleger Identity in Reports

It should be noted that the names and any information identifying alleged should not be included in the "Synopsis" section of an ROI, unless it is an H&I case where it is unavoidable. Alleger names and identifying information will routinely be included elsewhere in an ROI. Unless it is a discrimination case and the alleged is the victim of discrimination, alleged names will be purged from investigation reports prior to their release to the public.

#### 5.3. Documenting NRC Civil Action Concluded During Investigations

If, during the course of an OI investigation, the NRC proceeds with civil enforcement action (i.e., confirmatory action letters, notices of violation, civil penalties, orders to show cause), a description of this action will be included in the "Supplemental Information" section of the final ROI.

If civil enforcement actions are levied after the final report has been issued and the matter has been referred to DOJ, it will be the responsibility of the cognizant FOD to provide this information to DOJ and appropriately document the DOJ contact in the case file.

#### **5.4. Case Chronology**

A chronological record of investigative and supervisory activity for each OI investigation or assist to inspection will be maintained in the case file. The record will be started upon initiation of an investigation/assistance and continue until the case is closed. The record's purpose is to document all case-related activities, some of which may not be included in the final report, and to allow reconstruction of the manner in which an investigation/assistance to the NRC staff was conducted in the event responsibility is transferred to another agent. To avoid duplication, entries in the chronology should, when possible, refer briefly to other documents (statements, interview reports, memorandums, etc.) in the case folder (i.e.: "Interviewed James Smith. See transcript."). Otherwise, entries must be in sufficient detail to provide a complete understanding of the action. Although they may be typed, most entries will be handwritten. The case chronology should be used to record investigator or supervisory reviews, instructions given by supervisors, administrative processing data, contacts, coordination with NRC staff and other agencies, the fact that interviews or records reviews were conducted, reasons for adjusting ECDs, justification for delaying a 90-day decision or delays in field work (including the case numbers of other higher priority cases worked on during a given period), etc. A sample of the format and content of a Case Chronology is at Appendix D.

#### **5.5. Statements**

Whenever an interviewee provides relevant information, such as the admission of wrongdoing or the firsthand account of seeing another person engage in wrongdoing, an attempt should be made to have the interviewee document his or her testimony in a signed, sworn statement. The first paragraph should, as a minimum, include the name and identifying data concerning the agent and the individual (address and telephone number), the date and place of the statement, and acknowledgment that the statement is voluntary. The second paragraph should be a brief biographical statement which contains the experience, education, and training of the individual and any other information bearing on his/her qualifications in relation to the testimony he or she is providing. The basic format for a written statement is found at Appendix Q.

A discussion of the jurat at the end of a statement is contained in Appendix L, which addresses the administering of oaths and obtaining of affirmations.

Although the interviewee ultimately has the right to a copy of the statement in the same manner as he or she would in the case of a transcript or tape recording, the

timing of its release to the interviewee is at the discretion of OI. If release could interfere with the course of the investigation, it should be withheld until the investigation is completed.

Occasionally an interviewee may insist on immediately receiving a copy of the statement as a condition for permitting the interview. Such demands will be dealt with on a case-by-case basis. The investigator may proceed with the interview if he or she is reasonably confident that any potential damage to the investigation is outweighed by the benefits of conducting the interview at that time.

#### **5.6. Interview Reports**

If an interviewee declines to render a written statement, but is willing to answer questions, or if the case agent considers that an interviewee's testimony does not warrant a court reported transcript or written statement, the agent will document significant and relevant information developed during the interview in an Interview Report (IR). Interview Reports should be written as soon as possible after completion of the interview. Under circumstances where the matters at issue are pivotal, the agent should take pains to ensure accuracy by considering sharing the completed draft IR with the interviewee for comment, or consider taking a written statement or transcript as an alternative.

As a minimum, the IR must indicate the date and place of the interview; the identity of the agent(s) who conducted the interview; file numbers; the date dictated, prepared, and/or transcribed; the identity, address and phone number of the individual interviewed; the subject matter leading to the interview. A complete summary of the interview should follow. Completed Interview Reports will be placed in the case file.

Interview Reports must be written with considerable care to ensure they accurately depict what was stated by the interviewee. The use of attributive verbs such as stated, said, recounted, or the phrase, "According to \_\_\_\_\_," help the reader differentiate between what the interviewee stated as opposed to the agent's opinion as to what was said. The use of direct quotes further adds to the value of the report. At the same time, it is neither practical nor useful to attempt to document everything that was discussed during the interview. It is sufficient to include only testimony that is relevant to the matter under investigation. This would include any exculpatory information, any information that would assist the reader in assessing the attitude of the interviewee, or information which would demonstrate his or her apparent truthfulness.

Contradictions to known facts would normally be dealt with during the interview. This should also be made clear in the IR. If they were not brought to the attention of the interviewee for some reason, then an "Agent's Note" pointing out the apparent contradiction would be useful to the reader.

Separate reports normally will be prepared for each productive interview. However, a series of interviews where each interviewee provides essentially the same information, or a series of interviews where each person is unable to provide any pertinent information may be documented collectively on a single IR. The basic format for an Interview Report is shown at Appendix P.

#### **5.7. Transcribing Interviews**

In many instances, the use of a court reporter to record and transcribe an interview might be more appropriate than either a written statement or an IR. Examples of such circumstances include:

- compulsory testimony in compliance with a subpoena (the use of court reporters in these instances is the general rule as set forth in paragraph 4.5.6),
- initial interviews with alleged,
- where the issues are highly technical,
- lengthy or complicated interviews,
- some confrontational situations, and
- where it is necessary to interview a senior level management official.

The decision to use a court reporter during noncompelled interviews is left to the discretion of the agent, guided by the FOD. When court reporters are used, the agent must ensure that a clear understanding exists regarding ownership, security, and distribution of the transcripts. Copies of transcripts are not to be distributed by the reporting service to anyone other than the agent (or the cognizant FOD) who contracted for the service.

The interviewee is entitled to a copy of his/her testimony if compelled to testify, but, for "good cause," the agent may limit the interviewee to an inspection of the transcript until after the investigation is completed [see paragraphs 4.5.6., 4.7., and 5.5.

At the beginning of such an interview, the same data identifying the interviewee should be placed on the record as on a written statement.

#### **5.8. Management Review of Interview Results**

Each FOD will ensure a review of the case agent's statements, interview reports or transcripts. This is to keep the investigation moving along, help focus

investigative activities and ensure that each FOD will on a real time basis be following the developing case.

#### **5.9. Investigative Notes**

Whether or not to take notes during an interview (or other investigative activity) is a decision left to the discretion of the agent. However, contemporaneous notes made by an agent during an investigation could facilitate the compilation of an accurate, effective, and thorough investigative product.

The term "notes" includes handwritten notes, dictated notes, and other work papers made during an investigation. This term also includes documents prepared outside of but derived directly from an investigative activity. Notes should contain the dates and locations of record reviews, contents of interviews, or other activities. They should fully identify persons interviewed, other individuals present, and persons who provided assistance or documentation to agents. Finally, the notes should record the existence of unusual conditions or other developments which may impact upon the investigation.

##### **5.9.1. Method and Amount of Note Taking**

The method of taking notes is left to the discretion of the agent. The amount of note taking will vary with the circumstances. Friendly witnesses seldom object to notes being taken during an interview. On the other hand, hostile or nervous witnesses may be reluctant to provide any information, or worse, may hold back important information if they observe the agent writing notes of their oral remarks.

##### **5.9.2. Retention of Notes**

Agents must preserve any notes taken, even informal notes. The first page of any logical grouping of notes should be initialed and dated by the agent.

Upon completion of the investigation, the notes should be placed in one or more envelopes. The envelopes should in turn be labeled, both back and front, with the case control number, and the title "Agent's Notes." The envelopes should then be sealed and placed in the investigative file.

#### **5.10. Retention of Draft Documents**

In the absence of an ongoing FOIA or Privacy Act request pertaining thereto, all drafts prepared by OI personnel will be destroyed upon completion of the final written document. As a draft of an ROI, memorandum, or other OI document undergoes revision, the initial or any intermediate drafts will be destroyed upon preparation of the next draft or final product.

**5.10.1. Active Freedom of Information Act (FOIA) and Privacy Act (PA) Requests**

The exception to the draft destruction policy involves an outstanding FOIA or PA request for "any or all" documents associated with a particular investigation or action. All documents, draft or otherwise, that exist on the date of the FOIA/PA request must be preserved and added to the inventory list provided to OI Headquarters. This provision does not apply to drafts prepared subsequent to the date of the FOIA/PA request.

Retention of drafts in existence at the time of FOIA/PA requests is required by law even if the drafts in question were in OI files only because of administrative error; i.e., because the responsible employee failed to destroy them in accordance with the requirements set forth above.

Guidelines for responding to FOIA requests are contained in Appendix Q.

**5.10.2. "Personal" Copies of Drafts**

OI employees will not keep personal copies of drafts of reports or other official documentation. These drafts are legally NRC records regardless of their location. The fact that a draft is at an agent's residence or other location outside the NRC does not exempt it from the reach of subpoenas or orders granting judicial or administrative discovery motions.

**5.11. Disagreements Regarding Conclusions in Investigative Reports**

There may be disagreements between the FOD, investigating agent, and the Director, OI, regarding the conclusion in an ROI. If the parties are unable to reach an agreement, a copy of the ROI will be forwarded to the other three FOD's for review and comment. This review will be considered by the Director, OI, in the final resolution. If the FOD and/or agent are not satisfied with the final Director's decision, the individual(s) may prepare a memorandum to the case file explaining the reason(s) for the disagreement. The Director, OI, will ensure that any differing views are conveyed to the appropriate staff for use in their review of the final ROI and decision making process. This procedure is not intended to preclude the individual's right to use the NRC's Differing Professional View/Differing Professional Opinion process.

**5.12. Case File Management**

All material placed in the case file will be affixed to a blue four-position folder in chronological order. When the information concerning a case becomes too voluminous for one folder, an additional folder will be set up. Such folders will be designated 1 of 3, 2 of 3, 3 of 3, as necessary. All OI investigation case file folders are organized as outlined below:

<u>Position in Folder</u>	<u>Attachment</u>
Inside Front Cover	Investigation Status Records Case-Related Documents  Other Updating Reports Case Chronology Record  Mail Control Form (Assigned when ROI Received in OI:HQ) Report Distribution List
Front-facing Divider	Memoranda to File  Telephone Conversation Records Case-related Correspondence Transmittal Correspondence Title Page of ROI
Back-facing Divider	Congressional Correspondence Media Articles Enforcement Actions Other Pertinent Correspondence
Inside Back Cover	Department of Justice or Other Referral Correspondence

Accordion folders will be placed directly behind the blue folder in the following sequence:

(1) Accordion Folder	Report of Investigation with Attachments Transmittal Correspondence
(2) Accordion Folder	Board Notification Terrorism/Sabotage threats Policy Issues-SECY Papers Other Pertinent Information
(3) Accordion Folder	Background Information Agent's Notes

All material will be filed chronologically, with the most recent date uppermost. Additional folders may be used when the volume of material warrants.



**5.12.1.      Agent's Working File**

The case agent is authorized and encouraged to prepare and use a working file during ongoing investigations. This file will be identified as "Working File" with the case number. It will not contain original documentation other than the agent's notes, and the most current case chronology records. This working file should be retained during the course of the investigation by the assigned agent and may be taken with him into the field as required. The working file will be destroyed after completion of the field work and final report. Any original documents, including investigative notes, will then be placed permanently in the official case file folder.

**5.12.2.      Retention of File Material in Individual Offices**

Original official file copies and other original documentation should not be retained in an individual agent's records. This serves to preserve and better account for the original documentation and facilitates FOIA searches. It is imperative that OI files be kept complete in the official folders, since the alternative is that each future FOIA request would require a complete and thorough search of all agents' offices in the field and at Headquarters. [Note: Files may be sent to OI:HQ from the field offices after 6 months, or at the discretion of the FOD.]

## **CHAPTER 6**

### **COLLECTION, CUSTODY, AND PRESERVATION OF EVIDENCE**

#### **6.1. General**

The collection of evidence is a fundamental investigative technique. There are instances where the role of physical evidence is extremely important to the resolution and prosecution of the matter under investigation. Thus, it is especially important to collect and handle evidence in accordance with recognized legal and professional standards. The specific procedures to be followed by all agents who become involved with the collection, receipt, handling, or disposition of evidence are stated in the following paragraphs. These procedures do not apply to original written statements obtained by agents during the course of investigations, since these are self-authenticating. (They should, of course, be safeguarded adequately.) These procedures do apply to all other original or best evidence copies of documentary evidence obtained during investigations, as well as all physical evidence collected during investigations.

#### **6.2. Appointment and Duties of Evidence Custodians**

Each Field Office Director will appoint a primary and alternate evidence custodian in writing. The primary custodian must be an agent other than the Field Office Director. The alternate custodian should be the field office Investigations Assistant. Use of administrative personnel as custodians is authorized, but not as both primary and alternate. A copy of each appointing document will be kept in the field office evidence depository. The appointing documents will be brought forward for filing each calendar year that the primary and alternate evidence custodians retain their positions.

##### **6.2.1. Primary Evidence Custodian**

The duties of the primary evidence custodian are as follows:

- a. Account for, preserve, safeguard, and dispose of all evidence received by the Field Office.
- b. Maintain an evidence ledger and an evidence file in which all evidence records are contained.
- c. Protect evidence from loss, deterioration, and damage.

### **6.2.2. Alternate Evidence Custodian**

The alternate evidence custodian assumes all duties of the primary evidence custodian during any temporary absence of the primary evidence custodian.

Upon assuming duties of the primary evidence custodian, the alternate evidence custodian enters and signs the following handwritten statement in the evidence ledger, immediately below the last entry:

I, \_\_\_\_\_(NAME)\_\_\_\_\_, on \_\_\_\_\_(Date)\_\_\_\_\_, assumed all duties of the primary evidence custodian during the temporary absence of the primary evidence custodian. I accept responsibility and accountability for all evidence contained in the field office evidence depository.

\_\_\_\_\_  
(Signature of Primary Evidence Custodian)

It is not required to inventory the evidence prior to this temporary custody change unless it is anticipated it will be in excess of 90 days. Upon return from temporary absence, the primary evidence custodian ensures that all entries on records that pertain to evidence taken in, released, and disposed of by the alternate evidence custodian are correct and accurate. Following the return and after ensuring that the records are correct, that all the evidence is accounted for and properly documented, the primary evidence custodian enters the following statement in the evidence ledger, immediately below the last entry:

I, \_\_\_\_\_(Name)\_\_\_\_\_, on \_\_\_\_\_(Date)\_\_\_\_\_, resume my position as primary evidence custodian and accept responsibility and accountability for all evidence contained in the field office evidence depository.

### **6.3. Evidence and Property Processing**

The agent who assumes initial custody of evidence immediately marks the evidence for future identification. If possible, a permanent mark is placed directly on the item. If this is not possible, the agent shall place the evidence in a container that can be sealed and marked. Marking evidence includes the time and date of acquisition and the initials of the person who assumes custody of the evidence.

A record of the chain of custody of all physical evidence is made, regardless of how it is obtained. The agent who first acquires, marks, and tags the evidence is also responsible for initial accurate preparation of the Evidence and Property Custody Document, NRC Form 404, and for obtaining any required initial

signatures. Guidelines for preparing this document and further processing/ accountability of evidence are contained in Appendix R.

Each OI Field Office will maintain an Evidence Ledger, also described in Appendix R, for physical evidence received by that office, to provide accountability through cross-reference with Evidence/Property Custody Documents.

#### **6.4. Maintenance of Evidence**

Evidence is stored in an evidence depository so that the integrity and physical characteristics are maintained. This depository is normally an office safe or security cabinet of adequate size and is designated solely for evidence. Items such as metal objects are kept in a clean, rust-free condition to preserve their value as evidence.

Fingerprint cards obtained for comparison may be maintained in the proper case file instead of the evidence depository. When OI sends these cards to a laboratory for comparison with other evidence from the depository, the card need not be listed on an Evidence/Property Custody Document. The description on the laboratory request is enough to connect the card with the evidence. Replace the fingerprint card in the proper case file when returned by the laboratory.

Documents that may directly prove or disprove a point in question are kept in the evidence depository. Such items may include forged or altered documents, and other questioned documents, along with related standards or exemplars. Statements (including confessions) and copies of documents routinely associated with an investigation are kept in the case file and not in the evidence depository. Tape recordings of confessions, admissions, or other potentially incriminating conversations are maintained as evidence. When necessary, large items may be kept in an impoundment lot, warehouse, or other reasonably secure place, so long as the items are properly marked and appropriate control is maintained.

#### **6.5. Evidence Depository**

A locked safe or filing cabinet will be used to secure evidence. Entry to the safe or filing cabinet is restricted to the primary and alternate custodians.

Only the primary and alternate custodians know the combination of, or possess the key to, the lock to the evidence depository. However, copies of all combinations are recorded in sealed envelopes and forwarded to OI Headquarters for safekeeping.

Lock combinations should be changed when the primary or alternate custodian is changed. All combinations are also changed if there is any indication of possible compromise.

The evidence depository is locked by the evidence custodian at all times when not in use. Only authorized personnel are granted access to the evidence within the depository and then only in the presence of the responsible evidence custodian.

## **6.6. Inventories of Evidence**

### **6.6.1. Annual Inventories**

- a. An inventory of the entire contents of the evidence depository will be conducted annually, by the evidence custodian and the FOD, in January of each year.
- b. Each annual inventory will be recorded in the Evidence Ledger by the FOD by a hand-written entry extending across the ledger immediately following the last recorded logging of evidence into the ledger, and will read as follows:

On \_\_\_\_\_, an annual inventory of the contents of the evidence depository was conducted and all evidence is either present or accounted for in accordance with the Investigative Procedures Manual.

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Field Office Director

- c. During this inventory the FOD should ensure that all evidence receipts are properly completed and that all items no longer required as evidence are properly disposed of in a timely manner in accordance with this manual.

### **6.6.2. Changing Primary Evidence Custodians**

If the primary evidence custodian is to be absent in excess of 90 days or if the office is changing primary evidence custodians, a complete inventory of evidence contained in the depository should be conducted by both the incoming and outgoing custodians, and so noted in the evidence ledger. A newly appointed primary evidence custodian should also make a handwritten notation of his assumption of duties and responsibility in the evidence ledger with his signature, following the last entry, as follows:

I, \_\_\_\_\_(Name)\_\_\_\_\_, on \_\_\_\_\_(Date)\_\_\_\_\_, having conducted a satisfactory inventory, hereby relieve \_\_\_\_\_, and assume all duties of the primary evidence custodian. I accept responsibility and accountability for all evidence contained in the field office depository.

(Signature of New Primary Evidence Custodian)

#### **6.6.3. Inventories in Cases of Lost Evidence or Breaches of Security**

If at any time it is found that evidence has been lost, wrongfully disposed of, or a serious erroneous entry has been made pertaining to the evidence, the Director of the Field Office must be immediately informed. The FOD will then inform the Director/Deputy Director, OI. The FOD will cause an inventory to be conducted by an agent other than the evidence custodian. The inventory will be made in the presence of the evidence custodian. A memorandum will then be prepared to the Director, OI, through the FOD outlining the error, the results of the inventory and recommended corrective action.

#### **6.7. Final Disposition of Evidence**

Evidence will be disposed of by the evidence custodian as soon as it has served its purpose and is determined to be of no value as evidence. Disposition should take place at a maximum within 6 months of the date of that determination. The value of an item as evidence and its eligibility for disposition should be monitored by the FOD during annual inventories to ensure that disposition is timely.

Evidence released for judicial proceedings is returned as soon as possible to the evidence custodian for final disposition. If an item of evidence is made part of the record of trial, the agent immediately notifies the evidence custodian so that the Evidence/Property Custody Document can be properly notated. This is considered final disposition.

## **CHAPTER 7**

### **ALLEGATIONS, ALLEGERS, AND CONFIDENTIAL SOURCES**

#### **7.1. General**

Special Agents will comply with the provisions of NRC Management Directive and Handbook 8.8 (MD 8.8) regarding all matters relating to the management of allegations, allegers, and confidential sources.

#### **7.2. Allegations**

In accordance with MD 8.8, an allegation is a declaration, statement, or assertion of impropriety or inadequacy associated with NRC-regulated activities, the validity of which has not been established. Allegations are normally received from sources outside NRC. However, for accountability, tracking, and monitoring purposes, internal NRC findings of such impropriety or inadequacy resulting from inspections or other NRC action are also treated as "allegations."

##### **7.2.1. Allegation Management System (AMS)**

Allegations received by the NRC are entered in the AMS database. The AMS is used to track allegations concerning activities and facilities within the jurisdiction of the NRC. The AMS tracks the allegations from receipt to resolution, tracks involvement of regions and program offices, provides basic descriptive and status information, and provides reference to the closeout documentation.

Allegations which OI receives directly from an allegger, even those under the purview of OI, will be forwarded to the appropriate office or region allegation coordinator (OAC), because the OACs are responsible for entering all allegations into the AMS using their region or office AMS number.

##### **7.2.2. Allegation Review Board (ARB)**

In accordance with MD 8.8, an ARB in the appropriate action office or region screens each allegation and determines appropriate NRC follow up.

- An ARB consists of a chairman, an OAC, and one or more other individuals within the appropriate office or region. For matters of suspected wrongdoing, an OI representative should be in attendance for consultation and to provide any information developed during the OI preliminary investigation. Technical staff and staff from OE and OGC should participate as appropriate.

- The ARB should be chaired by the director of the action office or an individual named by the director of the action office.
- An ARB meeting should normally be held within 30 calendar days of receipt of an allegation by the action office.

### **7.3. Allegers**

An individual or organization that makes an allegation to the NRC is referred to as an **alleger**.

#### **7.3.1. Protection of Alleger Identity**

An **alleger's** identity or information that would reveal that identity--

- Should be withheld from staff except on a need-to-know basis
- Should not be disclosed outside the NRC, except as noted in paragraph 7.3.2, below
- Should be stored in a secure place under the control of the OAC or, if wrongdoing is involved or suspected, under the control of the Office of Investigations (OI)

#### **7.3.2. Disclosure of Alleger Identity**

Routinely, the first contact with an **alleger** will be either in writing or in person by a member of the NRC technical staff, such as the Office Allegation Coordinator (OAC) at either the region or Headquarters level. The OAC or technical staff will then inform the **alleger**, by telephone and letter, of the degree to which his/her identity can be protected. This is necessary since some **allegers** may incorrectly assume that the NRC can or will protect their identity under all circumstances. Upon initial OI contact with an **alleger**, in person, the OI agent will advise the **alleger** of the following, using the NRC Advisement on Identity Protection (Appendix S), and the form will be maintained in the OI case file.

In resolving technical issues, the NRC intends to take all reasonable efforts not to disclose the identity of an **alleger** outside the agency unless--

- The **alleger** has clearly indicated no objection to being identified.
- Disclosure is necessary because of an overriding safety issue.



- Disclosure is necessary pursuant to an order of a court or NRC adjudicatory authority or to inform Congress or State or Federal agencies in furtherance of NRC responsibilities under law or public trust.
- Disclosure is necessary in furtherance of a wrongdoing investigation, including an investigation of harassment and intimidation (H&I) allegations.
- Disclosure is necessary to support a hearing on an enforcement matter.
- The alleged has taken actions that are inconsistent with and override the purpose of protecting the alleged's identity.

For allegations involving H&I, the NRC will normally disclose an alleged's identity during an NRC investigation if the alleged is the victim of the discrimination.

For allegations involving wrongdoing, an alleged's identity may be disclosed at the NRC's discretion in order to pursue the investigation.

Special Agents may release the identity of and alleged when it is deemed necessary in the conduct of an investigation without prior consultation with or notification to the FOD, region staff, or the alleged.

#### **7.4. Confidential Sources**

An individual granted confidentiality is referred to as a confidential source. Details regarding routine procedures for granting and revoking confidentiality and for determining when the identity of a confidential source may be released outside the NRC can be found in MD 8.8, Part III.

#### **7.5. OI-Confidential Sources**

Confidential sources utilized by OI for investigative purposes regarding current specific cases or future use will be handled by the Special Agent who recruits them.

##### **7.5.1. Categories of Sources of Information**

There are essentially three categories of outside NRC sources of information used by OI:

1. The alleged who provides information on specific allegations freely, without requesting formal confidentiality. This alleged is protected

under the procedures described in paragraphs 7.3.1 and 7.3.2, of this manual, and in MD 8.8, Part I.

2. The alleged who requests formal confidentiality within the scope of specific allegations and thereby becomes a confidential source. This confidential source is protected under the procedures described in MD 8.8, Part II. It is OI practice to allow the technical staff to handle such formal confidentiality (reference paragraph 7.5.2.). This enables OI to interview these confidential sources when necessary, while the administrative requirements associated with handling such individuals in accordance with MD 8.8, Part II, are the responsibility of the technical staff, routinely the OAC.
3. Individuals recruited by OI and for whom OI takes responsibility in accordance with MD 8.8. These individuals then become OI confidential sources to be used in pursuing wrongdoing investigations. Their use may reach beyond the scope of any particular allegation.

#### **7.5.2. Handling of OI Confidential Sources by Special Agents**

In order to simplify the interaction and administrative requirements associated with alleged and confidential sources, agents should follow these procedures:

- If an agent grants confidentiality to an alleged reporting wrongdoing concerns and desires to recruit and maintain the alleged as an OI confidential source for investigative purposes, OI will forward information to the appropriate OAC without disclosing the name of the confidential source to the OAC.
- The agent will be the point of contact for an OI confidential source and will be responsible for all communication with the source, IAW MD 8.8, including sending the acknowledgment letter.
- Additional contacts with this type of confidential source will be at OI's discretion and in accordance with the OI Investigation Procedures Manual, Chapter 7.

### **7.6. Granting Confidentiality**

#### **7.6.1. Authority to Grant Confidentiality**

The Commission has delegated authority to the Director, Office of Investigations (OI), and the Executive Director for Operations (EDO) to designate those persons within their organizations who will be authorized

to grant confidentiality. The Director, OI, has redelegated this authority to the Deputy Director, the Field Office Directors (FOD), and each agent in OI.

#### **7.6.2. Purpose of Grants of Confidentiality**

The primary purpose of grants of confidentiality is to encourage persons possessing information relating to matters within NRC jurisdiction to report this information to the NRC. Thus, while agents must comply with the procedural requirements set forth in MD 8.8 and this chapter, each agent must exercise care that these procedures are applied in a manner that enhances rather than inhibits the flow of such information. It is particularly important not to present these confidentiality procedures in such a way as to lead the potential interviewee to perceive them as a bureaucratic obstacle. Rather, the agent should strive to assure that the interviewee fully understands the scope of any confidentiality agreement he or she may enter into with the NRC.

#### **7.6.3. Granting of Confidentiality**

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#### 7.6.4. Disclosing a Confidential Source's Identity

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#### **7.9. OI Confidential Source Information**

**An agent should obtain as much identifying information as possible about a potential OI Confidential Source. Identifying information should include, but not be limited to the following:**

- a. Name**
- b. Job title**
- c. Employer and address**
- d. Occupation**
- e. Home address**
- f. Telephone numbers (home and work)**
- g. Such other pertinent data as the OI Confidential Source may provide**

Given the highly transient nature of many nuclear workers, it would also be useful to elicit the name and address of any person who might be able to contact the OI confidential source.

#### **7.10. Confidential Source Control Officer (CSCO)**

##### **7.10.1. Appointment and Responsibilities of the CSCO**

Field Office Directors should assign the field office Investigations Assistant as CSCO, unless unusual circumstances dictate otherwise. The Director, OI, will appoint a CSCO in Headquarters to serve as the central contact point for Confidential Source matters and maintenance of the Confidential Source records. The CSCO will be responsible for ensuring the integrity and completeness of the Confidential Source records and conformity with existing guidelines/procedures (MD 8.8).

##### **7.10.2. Field Office Confidential Source Records**

The CSCO will maintain all OI Confidential Source records in their respective field offices. These records will be under the custody of and personally maintained by the CSCO. This information will be shared only with those individuals authorized to receive it.

Disclosures to individuals outside OI will be noted in the file. The Field Office Director is required to inspect these records annually (in January of each year). These records will also be examined during Field Office reviews conducted by OI:HQ personnel.

#### **7.11. OI Confidential Source Identifiers**

When confidentiality has been granted to an individual by an agent in accordance with the above-described procedures, an alpha-numeric identifier will be used in place of the source's name in reports of investigation or in any other references to the source that would serve to identify the individual as an OI confidential source. In some instances, the omission of the person's name from a report could, in itself, serve to identify him or her as an OI confidential source. An example would be when the source is one of a group of workers interviewed by OI. Listing the source's name in a report of investigation would not disclose the fact that the individual was an OI confidential source, but omission of the interview could.

##### **7.11.1. Assignment**

OI confidential source identifiers will be assigned by the Headquarters CSCO. When a number is assigned by the Headquarters CSCO, it will be

relayed to the Field Office CSCO for recording and indexing (see paragraph 7.12, Records).

#### **7.11.2.      Alpha-Numeric Codes**

OI confidential source identifiers are 6-digit alpha-numeric codes which reflect the following information:

- a.     granting organization (OI uses "OI" as a prefix);
- b.     calendar year in which the source was developed;
- c.     sequential numerical identifier reflecting the number of sources developed during the calendar year. A sample Confidential Source identifier is explained below:

OI - 86 -    07  
     .       .       .       seventh source developed  
     .       .       .       this year  
     .       .       ....  
                 .... current calendar year  
     .  
     .... indicates granting organization

#### **7.11.3.      Reliance on Source Identifiers**

OI confidential source identifiers must be used in official reports and records to protect an individual's identity. Disclosure standards will be in accordance with this chapter and MD 8.8 guidance. It must be recognized that the use of such OI confidential source identifiers in reports of investigation seldom are sufficient to protect the identity of a confidential source. Nonetheless, OI reports must continue to be written in a thorough and objective manner with sufficient detail to allow the reader of the report to arrive at an informed conclusion regarding the results of the investigation. Thus, agents should normally write their reports to achieve this goal rather than attempt to withhold from their product detail which could allow the reader to deduce the confidential source's identity. It is, however, possible to balance these competing interests of thoroughness of documentation and protection of confidentiality.

The degree of protection which source identifiers provide is primarily a function of the degree of familiarity that the reader of a report of investigation might have with the universe of individuals associated with the instant investigation. In most cases, an NRC employee reading an OI report would not possess sufficient familiarity with that universe of

individuals and/or the affected facility to allow the employee to deduce the identity of the source. It is likely that those NRC employees who might be able to do so would either have been granted the need- and right-to-know such information or not be given access to the report. Thus, adequate protection of a source's identity within the NRC could be achieved by a combination of administrative controls over access to those reports involving OI confidential sources.

The greatest risk of disclosure of an OI confidential source's identity would be the release of an ROI outside the NRC without first removing any information which could serve to disclose the source's identity. Thus, those OI employees responsible for the review and sanitization of OI reports for release outside the NRC must be diligent in seeking out and removing from the report any information which might conceivably disclose the identity of a confidential source included or referenced in the report even beyond the source identifier protection.

#### **7.12. Records**

All records pertaining to OI confidential sources will be under the direct and exclusive control of the Field Office CSCO for Field Offices, and the CSCO in Headquarters.

##### **7.12.1. Original Records**

All original records will be retained by the Field Office CSCO and duplicates will be retained by the Headquarters CSCO at OI:HQ. Written communication concerning confidential sources will be in double sealed envelopes labeled, "TO BE OPENED BY ADDRESSEE ONLY".

##### **7.12.2. Source Index**

The CSCO will maintain an index of all identifiers and confidential source identities. This index will be searched to ensure that duplicate numbers are not assigned, and to ascertain whether another agent is already working with the same individual.

##### **7.12.3. OI Confidential Source File**

An OI confidential source file should contain, at a minimum, the following:

- a. Source development (initiation) memorandum from the agent to the Field Office Director;
- b. Personal history information (Complete OI Confidential Source Development form);

- c. Confidentiality Agreement Form;
- d. Source closing memorandum, indicating that the source will no longer be used and why, when appropriate).
- e. Any other appropriate material such as memoranda regarding contacts and photographs should also be included. It is not required that the Headquarters confidential source files be as complete as the primary file at the field office level.

### 7.13. OI Confidential Source Contacts

#### 7.13.1. Rules of Contact

Resources and circumstances permitting, meetings with an OI confidential source should be with two agents.

#### 7.13.2. Documentation Requirements

Substantive meetings, contacts, or conversations should be documented, at a minimum, in a case chronology form. A copy of this documentation should be forwarded by the source handling agent to the Field Office CSCO for inclusion in the OI confidential source file.

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## CHAPTER 8

### RELEASE OF INVESTIGATIVE INFORMATION OTHER THAN FOIA

#### 8.1. Nuclear Safety and Security-Related Information Developed in an OI Investigation

The agent is responsible for protecting the integrity of the investigative process during the course of investigations. This responsibility includes controlling the release and dissemination of all information which may be germane to the matter under investigation. However, when the nature of this information is, or appears to be, related to nuclear safety or security or both, the agent has the additional responsibility of immediately notifying the appropriate NRC officials so that corrective action may be promptly initiated. [Treatment of FOIA requests for information developed during an investigation is covered in Appendix Q of this manual.]

##### 8.1.1. Notification Process

When an OI investigation identifies a potential significant safety or security issue, the agent will immediately notify the Director of the appropriate OI field office. The OI Field Office Director will have the responsibility to furnish the cognizant NRC Regional Administrator all available information concerning the issue(s) in question. The notification may be an oral briefing for expediency. The Regional Administrator will determine the actual safety or security significance of the issue and any requirement for prompt corrective action. After consultation with the OI Field Office Director, the Regional Administrator (or designee) may decide to notify the licensee, vendor, or other entity under investigation of those significant safety or security concerns requiring immediate action. Procedures governing such releases are described in MD 8.8. The OI Field Office Director (or designee) should advise the Regional Administrator and/or the cognizant Division Director to limit the release of information to the minimum necessary for protection of public health and safety.

After notifying the Regional Administrator of the safety or security issue, the OI Field Office Director will advise OI Headquarters at the earliest possible opportunity. The OI Field Office Director will prepare a written record of the OI notification which will include, but not be limited to, the nature of the information, the time and date it was provided to the region and OI Headquarters, to whom it was provided, and whether it was released outside NRC. On a simple issue this may be accomplished by a detailed entry in the case chronology.

OI bears the responsibility for notifying the Regional Administrator of safety or security matters which arise during an OI-conducted investigation. When such matters surface during an inspection or inquiry conducted by a particular regional staff, even though agents may have been asked to assist or participate, the responsibility for any notification remains with the regional personnel conducting the inspection or inquiry.

#### **8.1.2. Threshold for Notification of the FOD**

Determinations regarding the significance and immediacy of safety or security matters are the responsibility of the NRC technical staff. The threshold at which an agent should notify the FOD of a potential safety/security issue should be very low. When there is any doubt whatsoever, the agent should transmit the information.

This policy and threshold also apply to the notification of the Regional Administrator by the FOD. OI will set aside investigative compromise or future enforcement or prosecutorial considerations when a Regional Administrator determines that notification of a licensee is necessary because of the immediate public health and safety aspects of the issue.

#### **8.1.3. Notification of Action Offices of Deliberate Violations**

The action offices within the NRC are the four Regional Administrators and the Directors of NRR and NMSS. At the point in an investigation where sufficient evidence has been developed to reach a conclusion that the wrongdoing is substantiated, the FOD will so advise, and brief on request, the cognizant action office and enforcement staff. At a minimum, such contacts and briefings will be noted in the case chronology.

### **8.2. Release of Investigative Reports Outside NRC**

#### **8.2.1. Final Reports of Investigation**

Only the approving official may authorize release of Reports of Investigation outside the NRC.

Authorization to release an ROI includes:

- a. public release of reports.
- b. release of investigative reports to NRC licensing boards.
- c. release of information contained in investigative reports or the reports themselves to the Department of Justice or other law enforcement agencies.



As a general practice, OI reports will not be released outside the NRC except to other agencies, such as DOL or DOJ, for official purposes.

#### **8.2.2. Purging Reports of Allegor Identification Prior to Release**

All investigative reports or portions of investigative reports will be purged of any names of allegeders or information which might identify allegeders prior to release outside the NRC, with the following exceptions:

- Cases of discrimination where the allegeder is the victim of the discrimination.
- Referrals to DOJ or other prosecutorial entities
- Cases being worked jointly with other law enforcement agencies during joint investigations, where the information is essential to the conduct of the joint investigation.

This purging is the responsibility of the case agent and the FOD, with assistance from OI:HQ where requested.

#### **8.2.3. Referrals to Department of Justice (DOJ) and Other Agencies**

Formal referrals to DOJ and other prosecutorial entities normally occur after completion of a substantiated OI investigation. These referrals occur when the investigation of a violation of an NRC regulatory requirement develops evidence which leads OI to suspect that the act was committed knowingly and deliberately or otherwise in violation of either a Federal, state, or local criminal statute. When there is reasonable suspicion that a violation of a criminal statute has been committed, OI will refer the matter to the appropriate prosecutorial office for review and whatever action is deemed necessary. Referrals to DOJ will be in accordance with the Memorandum of Understanding (MOU) between the Department and the NRC (Appendix H).

##### **8.2.3.1. Method of Referral**

DOJ should be contacted and briefed orally about any case meeting the referral threshold upon its completion:

- If there is an oral declination, it may be documented by a memorandum to the cognizant enforcement staff with a copy to the action office and case file. It will also be recorded with a brief entry to the case chronology, in the next monthly ISR and in the supplemental information section of the ROI. The case may then be closed, signed by the FOD and issued. A

letter of transmittal will be sent to the cognizant Regional Administrator with the ROI attached. There will be a post review by OI:HQ. Distribution will be the same as if it was a substantiated case issued by OI:HQ. In a particularly complex or sensitive case, a FOD may wish to send a case to OI:HQ for review, regardless of an oral declination by DOJ.

- If it appears that DOJ may be interested in prosecution, a letter of referral (Samples are at Appendix I) should be sent to DOJ with the ROI attached, requesting formal review of the merits of the case for prosecution.
- In some unusual instances, it may be necessary and appropriate to make an early referral to DOJ, prior to completing an investigation. In such cases, if it appears that the judicial process will continue for an extended period, and OI assistance is not required by DOJ, the FOD has two alternatives, both of which require approval by OI:HQ:

1. Place the case in an "abeyance" status (Reference paragraph 3.2.2.7, this manual), or

2. Close the case on a modified ROI format, to accommodate circumstances. After DOJ has completed the judicial process, OI may open a supplemental investigation. The supplemental investigation will be used to conduct further investigation required to accommodate the needs of the NRC enforcement staff. The supplemental report may also be used to report DOJ results.

#### **8.2.3.2. Post-Referral Investigation**

The DOJ or other Federal agency to which the matter is referred has the discretion and responsibility to perfect a case for prosecutorial purposes. The extent of OI assistance will depend on available resources and will be coordinated through OI:HQ and documented in the case chronology. It is not required for an AUSA to submit a written request to OI for OI agents to assist in DOJ prosecution efforts. Such assistance is routine and encouraged.

#### **8.2.4. Release of Reports of Investigation to Licensees and the Public Document Room (PDR)**

Upon request by the NRC staff, the approving official may authorize release of synopses to reports of investigation, or the reports of investigation themselves, to the PDR and simultaneously to the licensee. Arrangements

for actual placement of these documents in the PDR or transmittal to a licensee are functions of the cognizant NRC staff action or requesting office, and not OI. Such releases will be recorded in the case chronology.

Release of any portion of OI investigative reports, including exhibits, will be authorized by the approving official only after a thorough review and purge has been conducted to ensure that the names of alleged or confidential sources as well as other information which might reveal their identity have been eliminated. A review of the documents to be released will also be conducted to protect individuals from unwarranted invasion of personal privacy. This activity will be recorded in the case chronology.

#### **8.2.5. Release of Reports of Investigation to Agreement States**

Field Office Directors should ensure that a copy of the synopsis of all NRC investigations involving agreement states is provided to the Regional State Agreements Officer (RSAO). Upon request, the RSAO will also be provided a redacted copy of the ROI, with exhibits. Redaction will be accomplished as necessary by OI Headquarters with support from region field office personnel. It will be the responsibility of the RSAO to provide the synopsis and/or ROI to the Agreement State after completion of any NRC enforcement action or action by DOJ.

### **8.3. Forwarding Investigative Information to Other Law Enforcement Agencies**

OI investigations may develop information which clearly involves matters within the jurisdiction of Federal, State, or local law enforcement or investigative agencies. OI will provide that information to the agency concerned under appropriate controls. (See MD 8.8 and Chapter 7 of this manual regarding disclosure of alleged and confidential source identities under such circumstances.)

#### **8.3.1. Information Currently Under Investigation by OI**

When a matter is under active investigation and OI develops information indicating violations of law which are clearly within the jurisdiction of another agency, OI will notify that agency through the formal referral process at the completion of the OI investigation. For example, an OI investigation might uncover evidence of counterfeiting, income tax evasion, or securities violations. Those matters would be referred to the investigative agency having primary jurisdiction (i.e., the U.S. Secret Service, the Internal Revenue Service, and the Securities and Exchange Commission).

In instances where a delay in notifying the agency has the potential for prejudicing the other agency's subsequent investigation, the Director, OI,

may approve notification prior to completion of the OI investigation. In emergency circumstances, a FOD may authorize immediate notification with expeditious follow up notification to OI Headquarters.

OI investigations which disclose evidence of sabotage, espionage, theft of nuclear material or terroristic activities always require prompt notification of the Federal Bureau of Investigation (FBI). Similarly, OI will promptly notify the appropriate agency if there is a likelihood that a delay could result in the loss or destruction of evidence, or result in death or serious injury to any person.

Lastly, prompt notification is mandatory if OI obtains information that a crime within the jurisdiction of another agency is about to occur or is occurring under circumstances where timely intervention by that agency could result in immediate arrests and/or seizure of evidence.

In instances where there may be more than one interested Federal agency, OI will provide the information to the appropriate Assistant United States Attorney. Similar procedures would apply to referrals to State or local authorities. If a second agency initiates activity during the pendency of an OI investigation, the OI investigation will continue, unless an agreement to cease activities is arrived at with the other agency. OI Headquarters must approve any delay or termination of an OI investigation under such circumstances.

#### **8.3.2. Requests for Information from Outside-NRC Agencies**

Requests for information regarding ongoing investigations from agencies outside NRC will be coordinated with and evaluated by the FOD prior to release, on a case-by-case basis.

#### **8.3.3. Information Pertaining to Matters Not Under Investigation by OI**

If OI develops information regarding violations clearly outside the jurisdiction of NRC, such as tax fraud, counterfeiting, homicide, racketeering, larceny of other than nuclear safety-related items, and similar matters, and they are not directly related to an ongoing OI investigation, the FOD should document the information in a letter to the appropriate Federal, State, or local agency. If it appears that more than one agency may have jurisdiction over the matter, the letter should be provided to the appropriate Assistant United States Attorney who, in turn, will determine which agency or agencies should receive the information. Analogous procedures would apply to referrals to State or local authorities.

The FOD should ensure that the letter specifies the reason for providing the information and sets forth any restrictions on its use, such as

conditions imposed by the source of information, confidentiality issues, or the impact of public disclosure on NRC activities. If the information is in the form of a statement or transcript, it may be forwarded with the aforementioned letter.

It is not appropriate to furnish the other agency information pertaining to NRC matters not relevant to their needs. Thus, nonrelevant material should be removed or, conversely, the relevant material extracted prior to furnishing it to the non-NRC agency.

#### **8.3.4. Release of the Identity of Allegers**

The identity of allegeders will be protected to the degree possible, in accordance with MD 8.8. However, the nature of wrongdoing investigations is such that it is essential to allow the agent the prerogative of revealing an allegeder's identity, when necessary, as an investigative technique to further the conduct of an investigation. This prerogative is protected in MD 8.8, but should be used sparingly and only when essential to the thorough completion of an investigation. Further, in order to fully and accurately document a wrongdoing investigation, it is appropriate to include in the ROI the names of allegeders. This prerogative is also protected in MD 8.8. However, prior to release of the ROI to a licensee or the general public (excluding DOJ or other Federal law enforcement agencies), the ROI will be purged of allegeders' names and any information which could identify allegeders. Although all reasonable efforts should be taken, it is realized that the narrowness of circumstances surrounding a given investigation may negate in part or in whole the effectiveness of this purging. The allegeder may be identified regardless of what or how much is taken out of the report prior to public release.

#### **8.3.5. Coordination Regarding Drug-Related Investigations**

Regarding drug-related investigations, coordination should be effected with Federal, State, and local enforcement agencies to ensure that the NRC is not unnecessarily interfering with broader drug investigations.

### **8.4. Notifications to Licensees, Applicants and Their Contractors and Vendors of the Initiation, Conduct, or Termination of an Investigation**

The notification of managers of the licensee or applicant and their contractors and vendors of an OI investigation is a sensitive step in the investigative process and requires discreet behavior by the agent during the course of his/her activities. OI may notify responsible management officials of the arrival of an agent on site. However, OI will not normally inform the licensee or applicant of the specific matters being investigated. This does not preclude discussions with

the licensee of the methodology for conducting the investigation, such as interview scheduling, space, or other assistance or support that may be required.

If appropriate, OI may notify the licensee or applicant and its contractors and vendors when the agent has completed his or her on-site activities. OI will not discuss the results of the investigation with them at this time; however, any safety or security issues requiring immediate attention will be handled in accordance with paragraph 8.1, above.

#### **8.5. Generic Letters to a Group of Licensees**

Correspondence proposed by OI to be sent directly to any group of NRC licensees to solicit information of a generic nature in furtherance of an investigation will first be forwarded to OI:HQ. The proposed letter will be an attachment to a cover memorandum describing the reasons for requesting such information and its urgency. The letter will be coordinated by OI:HQ through the appropriate program office, as necessary.

#### **8.6. Contacts With the Media**

Contacts between the news media and OI employees should be through the Office of Public Affairs (OPA). OI employees contacted by a media representative should courteously refer that person to the appropriate representative of OPA. OPA personnel are responsible for responding to media inquiries within the guidelines set forth in this section.

##### **8.6.1. Open Investigations**

OI will normally make no public comment regarding ongoing investigations. Public Affairs officers may acknowledge that OI is in fact conducting an investigation, after obtaining approval from OI. However, OI will not release details regarding that investigation, such as the specific nature of the investigation, the number of personnel assigned, or estimates as to its duration.

##### **8.6.2. Other Matters**

PA will refer media inquiries regarding other matters, including closed investigations, investigative procedures in general, or the functions of OI to the Director, OI. The Director, OI, will then decide whether (1) to respond to the media inquiry, and (2) authorize an OI employee to respond to the inquiry, if appropriate.

From time to time media representatives will attempt to contact OI employees directly. Although the above guidelines apply, it is also OI policy to deal courteously and honestly with such representatives. OI

employees will not provide false or misleading information to the media. An OI employee should be courteous in referring the representative to PA.

#### **8.6.3. Obtaining Information From the Media**

There may be occasions when media representatives are believed to possess information of interest to OI. The following procedures will apply to such instances:

##### **8.6.3.1. Information Volunteered by Media Representatives**

Occasionally, members of the media will contact OI to volunteer information regarding a matter potentially within the jurisdiction of the NRC. OI employees should receive this information in the same manner as they would receive any other information. OI employees should inform the media representatives that the information will be evaluated by appropriate agency officials to determine the proper course of action. OI employees must be careful not to commit to any specific NRC response to the information, and should inform the representative of OI's policy regarding media contacts.

##### **8.6.3.2. OI Initiated Media Contacts**

Occasionally, OI employees may identify a need to contact a media representative to obtain information. Typically, this need will arise when a news article or broadcast portrays general allegations regarding an NRC-licensed facility or activity and OI requires greater specificity in order to make an investigative decision. Except in emergency conditions, OI employees should seek the assistance of an NRC Public Affairs officer.

The Public Affairs officer should be advised of the impending contact, and assist in arranging for the interview. Agents must be especially careful to comply with OI guidelines regarding release of information during the course of such interviews. If the media representative is reluctant to provide information, the agent should discontinue the contact and consult his or her supervisor for advice. Under no circumstances will an OI agent attempt to threaten or cajole, to include the discussion of the issuance of subpoenas, a media representative who is unwilling to provide requested information.

#### **8.7. Obtaining Information From the U.S. Postal Service**

Usually an agent may obtain a forwarding address of a person, or an actual street address of a particular individual who possesses a post office box number by

displaying NRC credentials and explaining the purpose. Some U.S. Postal employees will also require a letter, certifying that the agent requires this postal information in the performance of official duties. In such situations, a letter similar to the following should be provided:

The undersigned certifies that \_\_\_\_\_ is a Special Agent with the Office of Investigations, U.S. Nuclear Regulatory Commission. Pursuant to 39 CFR 265.6 (Release of Information--Availability of Records), please provide to the above-named agent, without charge, the forwarding addresses or forwarding post office box numbers of the individuals or organizations listed below:

In the event the forwarding address is a post office box number, please provide also the actual street address of the individual or organization, if known. Such information is required to be obtained in the performance of the Special Agent's official duties with the U.S. Nuclear Regulatory Commission.

Director, \_\_\_\_\_ Field Office  
Office of Investigations  
U.S. Nuclear Regulatory Commission



**- - - WARNING - - -**

**SENSITIVE  
ALLEGATION MATERIAL**

THE ATTACHED DOCUMENT CONTAINS MATERIAL WHICH MAY  
RELATE TO AN OFFICIAL NRC INQUIRY OR INVESTIGATION WHICH  
MAY BE EXEMPT FROM PUBLIC DISCLOSURE PURSUANT TO ONE OR  
MORE PARTS OF TITLE 10, CODE OF FEDERAL REGULATIONS

**OFFICIAL USE ONLY  
SPECIAL HANDLING  
REQUIRED**

*WHEN NO LONGER NEEDED,  
DISPOSE OF THE ATTACHED DOCUMENT  
IN A SENSITIVE UNCLASSIFIED  
WASTE RECEPTACLE*

ACCESS TO INFORMATION CONTAINED HEREIN IS  
LIMITED TO STAFF AS REQUIRED FOR BRIEFING AND RESOLUTION.  
DISCLOSURE OF INFORMATION TO UNAUTHORIZED PERSONS IS  
PROHIBITED

**APPENDIX A**

**U.S. NUCLEAR REGULATORY COMMISSION**

**OFFICE OF INVESTIGATIONS**

INVESTIGATIVE GUIDANCE MEMORANDUM: 89-001

EFFECTIVE DATE: January 1, 1999

SUBJECT: SAMPLE INVESTIGATIVE  
GUIDANCE MEMORANDUM

**BACKGROUND**

This guidance is prepared to demonstrate the format for Investigative Guidance memoranda (IGMs) to be used in accordance with section 1.3. of this manual.

**GUIDANCE**

This format will be implemented as of the effective date of this manual for all future IGMs for the Office of Investigations, Nuclear Regulatory Commission.

Approved for issue by: \_\_\_\_\_, Director (or Deputy Director), OI  
(Name)

**[SAMPLE FORMAT FOR THE DIRECTOR'S GUIDANCE ISSUANCES]**

**Appendix A**

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**APPENDIX B**

**U.S. NUCLEAR REGULATORY COMMISSION**

**OFFICE OF INVESTIGATIONS**

**Transmittal Sheet for**  
**Additions to or Changes in the Manual**

Effective \_\_\_\_ (date) \_\_\_\_

**Change No. 1**

This manual change to section 1.4., "OI Manual Additions and Changes," provides new procedures for the annual review of the manual. Replace page \_\_\_\_ with is page.

**Change No. 2**

The attached new material, section 10.6., (subject), is to be added as pages \_\_\_\_\_. With "pen and ink," change 10.6. on existing page \_\_\_\_ to 10.7. and, similarly, change all succeeding section, paragraph, and page numbers in Chapter 10. A revised Table of Contents is attached to replace the existing Table of Contents, which is to be discarded.

Approved for issue by: \_\_\_\_\_, Director, OI  
(Name)

**[SAMPLE TRANSMITTAL SHEET FOR ADDITIONS TO OR CHANGES IN THE OI**  
**INVESTIGATIONS MANUAL]**

**Appendix B**

## **APPENDIX C**

### **INVESTIGATION STATUS RECORD**

*[Note: This appendix is under review. The format and content of the Investigation Status Record may be modified pending development of a revised ROI format and full development of the OI Management Information System (OIMIS), as well as publication of the OIMIS User's Guide.]*

#### **PURPOSE**

This appendix is prepared to assist the Special Agent in preparing the Investigation Status Record (ISR) pertaining to each of his cases. The ISR provides a complete record of the progress of the investigation from initiation to completion. It also serves as the basic and supplemental input document for the OI Management Information System; the monthly notification to the Commission that OI is investigating a matter; and, routinely, the first exhibit in a Report of Investigation (ROI). Thus, the case chronology, the ISR and the final ROI are the only formal OI documentation in either the field office case file or the OI Headquarters case file.

#### **DOCUMENT PREPARATION**

The ISR is a living document, updated each month by a progress report (see examples attached). The first ISR, upon opening the case, will contain an initial entry as described in Paragraph 3.2.2, OI Investigative Procedures Manual. If this ISR is to be used as the first exhibit in the ROI, then it should be on Page 1, and subsequent ISR entries should be placed on separate pages (Page 2, and so forth). The second and subsequent ISR entries will contain a description of the month's progress, to include brief one or two sentence descriptions of the results of any interviews or records reviews conducted (see examples attached).

On each page of the ISR, categories will be abbreviated by the codes listed below [i.e., Allegor will be abbreviated with the letter "A." See samples]. This is the input to the OI Information Management System (OIMIS), together with the STATUS and ECD from the text portion and is critical to the accurate compilation of statistical data. If there is any change in the initial OIMIS input in any subsequent ISR, this change will be replaced in the categories with the appropriate abbreviation, and explained in the text of the ISR [See samples].

The ISR will be completed as follows:

Case No.: Enter case number assigned by the field office.

**Appendix C**

**Facility:** Enter the name of the facility or individual involved in the case.

**Allegation No.:** Enter the Regional Allegation Tracking System number.

**Case Agent:** Case agent's last name.

**Docket No.:** Enter docket number. Each licensed entity has an NRC Docket Number. (This number is important to OI in that it is used to develop statistics separating reactor cases, materials cases, etc.) The actual license number may also be included in this section.

**Date Opened:** Enter the date the investigation was opened (not the date the allegation was received by the NRC).

**Source of Allegation:** Enter one of the following choices in this block for OIMIS purposes:

- A - allegor
- L - licensee/licensee employee concern program
- I - NRC inspector/technical staff
- O - OI self-initiated and developed
- T - Other government agencies, e.g. Congress, FBI, State Police, etc.

**Notified by:** Enter the last name and title of the person who notified OI, ie: Allegation Coordinator, Regional Administrator, Inspector, etc.

**Priority:** Enter the priority given the investigation by the NRC staff, when made available, followed by the cognizant staff person who was coordinated with to acquire this priority. Possible priority choices are:

HIGH      NORMAL      LOW

The priority of all OI cases opened will initially be NORMAL, unless and until a formal priority is provided by the technical staff, usually through an Allegation Review Board.

**Category:** Enter one or more of the following categories, as applicable, identifying the primary category (which will

be entered as the first category for retrieval purposes in OIMIS):

SS (false statement/sworn statement)  
WR (false statement/written)  
OM (false statement/omission)  
OR (false statement/oral)  
IH (intimidation and harassment)  
LC (license conditions)  
AE (Atomic Energy Act)  
MA (misadministration)  
DR (drug-related)  
MS (miscellaneous)

**Case Code:** Enter one of the following case codes, as applicable:

RP - Power Reactor  
RR - Research Reactor  
RV - Reactor/Vendor  
RO - Reactor/Other  
MM - Materials/Medical  
MI - Materials/Industrial  
MV - Materials/Vendor  
MN - Materials/Non-Agreement State  
MW - Materials/Waste  
MU - Materials/Uranium Enrichment  
MO - Materials/Other

**Subject/Allegation:** Enter a brief description of the subject/allegation involved, sufficiently descriptive for retrieval purposes (use prose rather than citing the regulation).

**NOTE:** All H&I discrimination cases will be titled using the same basic wording, in accordance with paragraph 3.2.2.10, of the IPM.

**Remarks:** This section may be used for pertinent comments, as necessary. For instance, if the allegation was surfaced by the filing of a 10 CFR 2.206 petition, this fact could be entered in bold type to alert that there are specific time constraints on such cases, in accordance with NRC Management Directive and Handbook 8.11.

**Monthly Status Report:** The first entry in this section will be the date the case was opened. The first entry will contain a brief, but informative, description of how OI became involved, the allegation itself and the purpose of the investigation. Regardless of when during the month a case is opened, the initial entry will cover the progress report for that month and it will not be necessary to submit a separate "end-of-month" entry, unless of course there is progress to report by end-of-month.

The first full 30-day entry following the initial entry will contain information on the results of the interview of the alleged, if there is one, or the cognizant NRC staff person. If the interview has not been accomplished, this entry will contain the reason for delay.

Subsequent monthly entries will give informative, but concise details of progress during the month, including interview and/or record review results.

**STATUS:** After each ISR entry the status of the case will be shown. The status will be one of the following:

**FWP -** Field Work in Progress. Used during the first 90 days and thereafter as long as field work is continuing. If there is no field work on a case for one, two or three months, it still remains FWP status. If it appears a longer delay will be necessary before field work can be resumed, then the case should be placed in the next category, PENDING.

**PEN -** Pending. This section covers a period when the making of a "90-day decision" is delayed beyond the 90 day ECD due to staff coordination or other reasons outside OI control; where for one reason or another "field work" has been suspended for an extended period due to NRC-related or outside NRC reasons beyond OI control; or when "field work" has been suspended due to work on higher priority cases for in excess of 90 days. Use of this status

automatically means the ECD is either **UNSCHEDULED** or **ABEYANCE** (Explained below). The reason for using this status must be explained in the ISR text entry, including the case numbers of higher priority cases worked where applicable.

**RID - Report in Draft**

**RIO-# - Report (final) in OI:Region \_\_\_\_\_ for Review**

**RIO-H - Report (final) in OI:HQ for Review**

**ECD:**

The ECD section will follow the "STATUS." The first ECD will be 90 days after opening the case, and read: "ECD (90 DAY): \_\_\_\_\_. Subsequent ECDs, after the 90 day decision point, should reflect a realistic estimate considering caseload, number of agents available, the complexity of the investigation, etc., in accordance with paragraph 3.2.3.5, of this manual.

If the 90 day decision cannot be made within 90 days, such as when awaiting a staff ARB evaluation or inspection, as soon as the 90 days are over, the next ISR will read: **STATUS: PEN** (for "pending") **ECD: UNSCHEDULED**. Thereafter, as soon as it can be accomplished, a reasonable ECD will be established and it will then be the first ECD counted for statistical purposes. When using this approach, the ISR text will explain why it is in a "PEN/UNSCHEDULED" status.

During the course of an investigation there may be lengthy delays during which an agent is unable for various reasons within OI control to continue the normal investigative process in a given case. Alternately, the case may be held in abeyance while awaiting an effort outside OI control. Since continually changing an ECD is not appropriate, and the following procedures will apply:

\* Where such delays are within OI control, the status entry on the ISR should read "PEN" (for "pending"), and the ECD entry should be reflected as "UNSCHEDULED." It should remain in this status until the case is once more being actively pursued. The next ISR after resumption of the investigation will reflect a reasonable ECD. As when



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a 90 day decision is delayed, when PEN/UNSCHEDULED is used under these circumstances, there must be an explanation of the reason for it in the text of the ISR. These delays, because they are within OI control, will be classified as continuing OI activity for purposes of statistically accounting for the time it requires to complete an investigation.

\* Where delays are outside OI control, the status entry should read "PEN," and the ECD entry should be reflected as "HELD IN ABEYANCE." Again, there must be an explanation in the text of the ISR. These delays, since they are out of OI control, will not be counted as OI activity for statistical purposes toward completion of the case.

#### COORDINATION AND DISTRIBUTION OF THE ISR

Having completed an initial or monthly draft ISR, the FOD will coordinate it by E-Mail and/or telephone with the cognizant OI:HQ Operations Officer. The Operations Officer will ensure that the draft ISR conforms to this manual and appropriate OI:HQ statistical/management projection concerns. Upon finalizing the ISR, the FOD will submit the ISR by E Mail (Subject: Final ISR Case No. \_\_\_\_\_) to the Operations Officer with two copies (CC): one for the OI:HQ file and one for statistical input to OIMIS. An additional copy of an initial ISR will be forwarded (BC) for incorporation in the OI Monthly Report.

The initial draft ISR will be forwarded to OI:HQ within two working days of initiating the case. Drafts of monthly ISRs are due at OI:HQ by the 5th working day of each month.

#### CLOSING ISR

The ISR forwarded at case closure should reflect the date closed, the date issued, and the closing action (reference sample attached).

##### Closing Actions (Results):

A - Administratively Closed  
I - Incorporated  
S - Substantiated  
T - Transferred

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- U - Unsubstantiated
- R - Lack of Regulatory Requirement
- P - Higher Priority
- F - Investigative Assistance to Staff
- O - Other (Explain)

**DOJ Activities (After Case Closure):**

Monthly ISRs should be continued to reflect DOJ activities and the progress/results of court proceedings.

**OFFICIAL USE ONLY**

[illegible]

## **APPENDIX E**

[NOTE: This appendix is under review pending development of a revised Report of Investigation format currently being tested in a pilot program]

### **FULLY DEVELOPED CASE ROI FORMAT**

#### **E.1. Preparation of the Full Format Report of Investigation.**

A full format Report of Investigation (ROI) is defined as the investigative report required when an OI investigation has been fully developed and resulted in either a substantiated or unsubstantiated case. Its purpose is to provide the NRC staff with sufficient developed evidence for enforcement action, and/or, secondarily, to provide Department of Justice (DOJ) with sufficient information for criminal prosecution, where warranted. A sample ROI has been provided as a guide to writing a full format ROI.

The ROI contains the following sections:

- TITLE PAGE (not on letterhead)
- SYNOPSIS
- TABLE OF CONTENTS
- ORGANIZATIONAL CHART (optional)
- LIST OF INTERVIEWEES (optional)
- DETAILS OF INVESTIGATION
- SUPPLEMENTAL INFORMATION (optional)
- LIST OF EXHIBITS
- REFERENCES (if any)

(The entire ROI is preceded by a cover sheet indicating the title of the report. The contents and format of each of the above sections are discussed in the following material and illustrated in a sample ROI which follows this discussion.)

**Title Page.** The title page presents the information indicated in the sample ROI in the format shown. All Field Offices and the Headquarters use this format. This page is not numbered. Descriptions of the required entries are as follows:

#### **Title**

The title is written to make the case readily identifiable as to site of the violation or event. This is accomplished by starting with (1) the name of the facility (nuclear power plant or other), or (2) the name of the company (other than a power plant) being investigated, or (3) the geographic location if no identifiable facility or entity is involved. The facility, company, or geographical location is followed by a colon and a simple statement of the nature of the investigation. For example:

Title: XY2 Nuclear Power Station:

Falsification of Guard Records

Title: ABC Corporation:

Falsification of QA Records

Title: New York, NY:

Violation of Technical Specification 2.3.1

Licensee/Permittee/Vendor/Location

The name of the licensee, permittee, vendor, or geographical location involved in the investigation is listed, followed by the complete address for the main office or location. Delete titles that do not apply; that is, use "Licensee," or "Permittee," or "Vendor," or "Location."

Docket Number

The NRC docket number, if any, of the entity involved in the investigation is entered. Omit "Docket No." heading if there is no docket number.

Case Number

The case number is the number assigned by the Field Office when the case is opened. This number continues throughout the life of the case. The basic case number is composed of a single character identifying the control office (1, 2, 3, and 4, signifying OI Field Offices in Regions I, II, III, and IV, respectively), two digits signifying the calendar year of case initiation, and a three-digit sequential number (e.g., 3-84-012). The case number remains the same regardless of which office prepares the report or how many reports are prepared. Supplemental reports on the same case are identified by adding the suffix "S" and thereafter for each additional supplemental report adding S1, S2, etc. If an "Assist to Inspection" is undertaken, the basic case number will have an "A" added as a prefix. In all other cases, the basic case number will be used.

Report Date

The report date is the date the ROI is approved for issue and is signed. This date is added at Headquarters for those full format reports forwarded for review to OI:HQ. The date will be added at the Field Office on all early closure, other abbreviated reports, and full format reports signed by the FOD.

### Control Office

The OI Field Office to which the investigation is assigned is the Control Office.

### Status

There are three categories of status. This item is always entered in capital letters. The categories are:

**OPEN**                      From the time an investigation is initiated, to the closing, the status is listed as OPEN.

**CLOSED**                When the final report of the investigation (ROI) is signed out, the status is shown as CLOSED.

**SUPPLEMENTAL**      When new and/or significant information is received after an investigation has been closed and it is necessary to write an additional ROI to document this information, the status is listed as SUPPLEMENTAL.

### Signature Blocks

The names of the reporting investigators, the Field Office Director and the Director, OI (DOJ referrals), are typed above their printed titles. Each signs above his/her name, as appropriate depending upon the type of report.

### Participating Personnel

All persons who participated in the investigation, including NRC region staff personnel are listed by name, title, and organization. Their signatures are not required.

**Synopsis.** The "SYNOPSIS" follows the title page. It starts on page 1. The synopsis provides the purpose and findings of the investigation. It summarizes only information presented in the body of the report. THE SYNOPSIS IS NORMALLY NO MORE THAN ONE PAGE IN LENGTH, and is basically the report "purpose" in the first paragraph, and the report "conclusions" in the second paragraph (minus names). It may be necessary in an unusual and complex investigation to insert a middle paragraph to further clarify the investigative effort. It will be made available in the NRC Public Document Room (PDR) by the Regional Administrator or other NRC official responsible for action, if any, based on the investigation. Therefore, it will be written using job titles or descriptive phrases, rather than names of individuals. Special care should be taken in composing the synopsis not to reveal information which could identify an alleged.

Two examples of cautiously written first paragraphs follow:

On May 26, 1999, an alleged reported that during the course of an NRC inspection at Nuclear Medicine and Nuclear Radiology Departments, Western Hospital, Erie, PA, a medical doctor intentionally provided false information to an NRC inspector regarding the measurement of radiopharmaceuticals before they were administered to patients.

On October 20, 1983, information was received from an alleged who claimed that welding on piping to the main feedwater system at the Silver Storm Nuclear Power Station, Jefferson, Maryland, was being performed by unqualified welders. The alleged indicated that licensee management was aware of the problem and was not taking action to correct the situation.

The investigative findings or facts relative to each allegation or event are discussed in the same order as in the "Details" section of the report. The findings and facts are condensed so that it is not necessary to say that investigative findings are the result of investigative effort.

**Table of Contents.** All ROIs contain a "Table of Contents" section that lists all sections and subsections of the report, beginning with the "Synopsis." Unlike a technical report where the contents section precedes all text, this contents section is numbered in sequence with the preceding material at the bottom center.

The "Table of Contents" section is located following the "Synopsis." It starts on an odd-numbered page and has the following general appearance:

#### TABLE OF CONTENTS

	<u>Page</u>
SYNOPSIS .....	1
ORGANIZATIONAL CHART (optional) .....	9
LIST OF INTERVIEWEES .....	11
DETAILS OF INVESTIGATION .....	13
(with all subheadings identified)	
SUPPLEMENTAL INFORMATION (optional) .....	etc.
LIST OF EXHIBITS .....	etc.

**List of Interviewees.** The "List of Interviewees" section includes the name (last name first and alphabetically); job title or relationship to the investigation; and the exhibit number where their testimony and/or involvement in the investigation can be located. With the inclusion of a list of interviewees, the

reader should be able to recognize the individuals involved and their titles without difficulty. In a lengthy report, however, it is the case investigator's prerogative to identify an interviewee by full name and/or title more than once in a report to assist the reader. If the number of interviewees is three or less, list of interviewees may be eliminated. If used, however, the list appears on a separate odd-numbered page followed by a blank even-numbered page.

**Organizational Chart.** The optional "Organizational Chart" section is used when the presentation of the chart will clarify complicated relationships and make clear the position of the person interviewed and the positions of the suspects, etc. It appears on a separate odd-numbered page followed by a blank even-numbered page. Multiple organization charts can be used to reflect any changes which occur during the course of an investigation or as otherwise necessary.

**Details of Investigation.** The main body of the report is the "Details of Investigation" section. It summarizes all pertinent details of the investigation in a brief, but thorough, systematic, comprehensive, and objective manner. It must be written so that the reader comprehends the significance of the investigation and findings, is convinced of the findings and thoroughness of the investigation, and is willing to take action or not take action based on the facts set forth. Captioned subsections divide the material into descriptions of the investigative activity being reported. As shown in the attached sample, after a series of initial subsections, which basically apply to all the allegations/issues, each allegation/issue is addressed separately.

The first subsection under Details of Investigation is titled "Applicable Regulations." These regulations are listed by allegation number; for example, Allegation No. 1. Each allegation and regulation is presented in numerical order. The listings of applicable Title 10 Code of Federal Regulations (10 CFR) sections are in the same sequential order as they appear in 10 CFR.

The 10 CFR references are commonly used in the day-to-day regulatory process; however, it is necessary to cite the appropriate sections of the Atomic Energy Act or the Energy Reorganization Act of 1974, which relate to an allegation.

The specific 10 CFR sections that pertain to an allegation or event are normally furnished by the cognizant NRC office involved with the investigation. If the regulatory process determines that an allegation is substantiated, the 10 CFR sections cited serve as part of the basis of the finding of a violation. Thus, for the Office of Investigations, the 10 CFR sections establish the parameters of the investigation.

There are instances where a specific 10 CFR section does not apply, as in the case of an allegation regarding a licensee's security plan, technical specifications, license conditions, etc. In such instances, the appropriate plan requirements, specifications or conditions that apply to the allegation(s) are listed. Only the numerical citation and the title of the applicable section and/or subsection(s) are necessary.



Criminal violations under the United States Code identified during an investigation will be included in the Applicable Regulations portion of the ROI. In summation, the applicable regulations will include CFR, AEA, License Conditions, Technical Specifications and Title 18 U.S. Code citations.

The next three initial subsections (Purpose of Investigation, Background and Interview of Allegor/Cognizant NRC Staff Person) are mandatory. The next subsections regarding coordination with NRC staff will vary according to necessity and the requisite clarity of the report.

The "Purpose of Investigation" subsection provides a clear understanding of what the investigation is about. The text under this caption is usually one or two sentences, particularly if only one allegation is involved, but it may be more extensive for a complicated investigation. It must parallel the statement in the synopsis that gives the purpose of the investigation.

The text under the "Background" caption is used to succinctly describe the situation or information that led to the initiation of the investigation. It should include the identity and involvement of NRC officials who provided information leading up to the investigation, but this subsection does not record investigative effort undertaken subsequent to initiation of the investigation. It may discuss inspections or technical staff inquiries that provided the basis for initiation of the investigation.

If there is an allegor, a subsection titled, "Interview of Allegor," which will provide details of that interview. If there is no allegor, this subsection will cover an interview of the cognizant NRC staff member who can provide details of the wrongdoing issue discovered in an inspection or other NRC regulatory activity, and be so titled.

The next subsections are optional, but recommended where appropriate. They provide as needed information pertinent to the investigation, such as "Coordination with NRC Staff," "Coordination with Regional Counsel," "Review of Documentation," or "Review of DOL Report."

The investigation of each allegation/issue is addressed separately, under "Allegation #1, Allegation #2, etc. Each allegation is further subdivided by an "Evidence" subsection (which may include additional subtitles, such as "Testimonial Evidence," "Documentary Evidence," and/or "Physical Evidence," as deemed appropriate.), an optional, but recommended "Agent's Analysis" of the evidence, and finally the "Conclusions" section. If document reviews are extensive and/or specific for a given allegation, it may be appropriate to name particular documents reviewed in the title, such as "Review of Quality Assurance Licensee Procedure." These subsections may be written in varying degrees of complexity depending on the allegation/issue and what is judged by the agent to be the most effective to portray logically and accurately the conduct and results of the investigation.

**NOTE:** The sample ROI is written as a guide. Depending upon the complexity and circumstances of individual investigations, length, writing styles, and titling of the sections within the details of investigation may vary.

To further clarify the mandatory subsection titled "Evidence," this subsection describes the points of testimonial, documentary and physical evidence which support the conclusions drawn from the investigation. They should build the body of evidence toward the conclusion(s) in a logical manner, including points of material fact bearing on the elements of proof of the alleged violation, and relevant exculpatory information to the extent necessary to give a balanced picture of the evidence or lack thereof, and establish the validity and accuracy of the allegation and conclusion. Every point of evidence brought out in this subsection should be supported in the exhibits attached to the report.

A subsection may be added at this point titled "Agent's Analysis," at the discretion of the case agent and FOD. Where used, this subsection should provide a "road map" to tie the evidence together and describe what weight the agent gave to separate pieces of evidence, and why, in order to reach the conclusion(s). Even if an agent's analysis section is not included, the exercise of analysis should be conducted, to more appropriately decide what points of evidence should be included in the "Evidence" section.

The mandatory subsection titled, "Conclusions" should be a simple statement addressing the specific allegation(s) described in the "Purpose of Investigation" and "Applicable Regulations" sections. The conclusion(s) should delineate either substantiation of the allegation(s) or that the allegation(s) was/were unsubstantiated. An unsubstantiated conclusion can either mean that there was insufficient evidence in the case to substantiate the allegation or that there was sufficient evidence to actually disprove the allegation. The conclusion section should point out which is the case.

**Style.** Surnames of persons identified in the ROI are in all capital letters. All interviewees are identified by full name and job title the first time they appear in the list of interviewees or the text. Thereafter, they are identified only by surname in all capital letters. The exception is where more than one individual has the same last name. In these instances, the individuals will be further identified with a first or first and second initial preceding the last name. Confidential sources will not be named in an ROI, but will be referred to by their alpha numeric code.

**References to Exhibits.** When a particular exhibit supports a fact in the narrative, a reference to that exhibit should be made (Example: John DOE failed the examination (Exhibit 8)). If the exhibit is not lengthy, the case agent may also choose to reference the exhibit generally after the interviewee's name in the title of the section describing the interview (Example: Interview of JONES (Exhibit 6)). If an exhibit is in excess of ten pages, the citation should include the page number as well as the exhibit number (Exhibit 5, page 1). Even where numerous exhibits are referred to throughout the

narrative, the exhibit number should be given. Care should be taken in the writing to avoid excessive call-out of exhibit numbers.

**Supplemental Information.** This optional section permits the reporting investigator to record significant discussions and information pertaining to the investigation without disrupting the continuity of the narrative in the "Details of Investigation" section. This section may include, but is not limited to, the following:

- a. reporting observations, ancillary data, and other discretionary information,
- b. recording relevant information pertaining to past inspection/ investigation reports concerning individuals and entities discussed in the ROI,
- c. discussing referrals to other Federal, State, and local law enforcement agencies and other Government agencies of information developed during the investigation,
- d. discussing referrals of technical information to others,
- e. presenting information regarding referrals of safety and technical significance to NRC staff,
- f. reporting pertinent discussions of investigative matters with NRC Regional Administrators, other NRC staff, and public officials, and

Coordination should also be made with the Enforcement Staff sufficient to determine if enforcement action of some type has already been taken relating either directly or indirectly to the matter OI is investigating. If so, this information should be included in the Supplemental Information section of the ROI. For a case that is going to be referred to the Department of Justice, this information should also be in the letter of transmittal.

**List of Exhibits.** A sequentially numbered "List of Exhibits" is included as a section of the ROI. The order of presentation of exhibits within the list is left to the discretion of the reporting investigator. They retain that number whenever referenced in the ROI, even though the references in the report text may not be made in sequence.

Normally the exhibits are placed sequentially in the exhibit folder. Each written exhibit is fully identified by case number on the exhibit. If the exhibit is not a document that can be placed in the exhibit folder, the location of that exhibit will be indicated both in the list of exhibits and in the exhibit folder.

## **E.2. Signature, Approval, and Distribution of an ROI.**

Field Office Directors are authorized to sign as approving officer and issue ROIs except when they meet the following criteria:

- a. The investigation is of a highly sensitive nature with OI:HQ or Commission monitoring.
- b. OI:HQ has specifically requested that the report be forwarded for Headquarters review prior to issuance.

This procedure will require that all quality and content review for investigative thoroughness, accuracy and to ensure that it is administratively correct will be accomplished at the Field Office level prior to the issuance of the report. The only OI:HQ review which will be conducted on reports approved by Field Office Directors will be a post-issuance review by OI:HQ Operations Officers. Only major significant corrections will be made after such issuance. These corrections will be accomplished by preparing and issuing a "Corrected Copy" of the Report of Investigation, marked as such on the cover page, top and bottom, in capital letters. Such major corrections to an already issued report will require concurrence of the Field Office Director and approval of the Deputy Director, OI, and must be issued to all recipients of the original ROI.

OI cases for purposes of the distribution list will be categorized as either substantiated or "all others." "All others" will include unsubstantiated cases and cases closed early for various reasons, such as higher priority matters. The FOD may either choose to reproduce and distribute signed substantiated cases, or to make minimum distribution. If the latter course is chosen, upon receipt of these cases, OI:HQ will reproduce and distribute any copies required by OGC, DEDE, NRR/NMSS (whether the action office or not), the Chairperson, the Commissioners, etc. The field office must notify OI:HQ in each case where such support is desired.

Distribution of OI cases will be as follows:

**SUBSTANTIATED CASES**

**With exhibits:**

File copy (FO)  
File copy (HQ)  
Action Office (Regional Administrators, NRR or NMSS)  
OE  
OGC

**Without exhibits:**

DEDE  
NRR/NMSS (When not the action office)

If case referred formally to DOJ:

CHAIRPERSON  
COMMISSIONERS

ALL OTHER CASES (Including unsubstantiated cases and early closures).

File copy (FO)  
File copy (HQ)  
Action Office (Regional Administrators, NRR or NMSS)  
OE  
NRR/NMSS (WHEN NOT THE ACTION OFFICE AND WITHOUT  
EXHIBITS)  
OGC (UNSUBSTANTIATED CASES ONLY AND WITHOUT  
EXHIBITS)

After an ROI is approved and signed, the original report with exhibits (copies) and one copy of the report without exhibits will be retained in the case file at OI Headquarters. A copy of the report with original exhibits will be retained in the case file at the OI Field Office. A copy of the report with exhibits will be provided to the Regional Administrator or other NRC action office (NRR or NMSS) through the Field Office Director. OI Headquarters will provide copies of the ROI with exhibits to cognizant staff elements constituting initial distribution.

### E.3. Abbreviated Reports of Investigation

Abbreviated Reports of Investigation in situations where early closure without a fully developed OI investigation is warranted, are authorized in accordance with Chapter 5 and Appendix G of this manual.

## **APPENDIX F**

*[NOTE: This appendix is under review pending development of a revised Report of Investigation format currently being tested in a pilot program.]*

### **INSTRUCTIONS FOR PREPARATION AND EXAMPLES OF EARLY CLOSURE ROI FORMAT**

The following The following instructions refer to the attached samples of early closure and abbreviated Reports of Investigation (ROI). An early closure case is defined as one which does not warrant or require fully developing an investigation. Such cases may be closed with an abbreviated ROI, in accordance with this appendix. In addition, there are licensee-investigated cases and collateral (lead) investigations which may be closed on an abbreviated ROI.

#### **F.1. Preparation of an Early Closure/Abbreviated ROI**

**Title Page.** The Title Page will remain the same as a full format ROI.

**Synopsis.** The synopsis should be very brief. Copy the initial Investigative Status Record (ISR) entry without using names. This should also be the "Purpose" subsection which does use names. The second paragraph of the synopsis should be the reason for early closure. The synopsis should be located on a separate facing page, but unlike the full format ROI, the abbreviated ROI may be on back to back pages from the synopsis forward.

**Table of Contents.** The same as a full format ROI, but with fewer sections and subsections. See the attached sample abbreviated ROI for "low priority" cases.

**Details of Investigation.** There are six simple and mandatory subsections within the body of Details of Investigation: Applicable Regulations, Purpose of Investigation, Background, Interview of Allegor, Coordination with NRC Staff, and Closure Information. (The exception to this is the unique format for a collateral investigation ROI, a sample of which is attached.)

**Applicable Regulations** - In the abbreviated ROI this is a subsection under the details, but with the same information/cites.

**Purpose of Investigation** - Routinely a verbatim copy of the initial ISR entry.

**Background** - A brief background, but in keeping with the same definition as provided for a full format investigation report.

**Interview of Allegor** - It is mandatory to interview the allegor, and document this interview in even an abbreviated ROI. Other subsections may be added here if there were any other interviews or document reviews conducted during the preliminary phase of the investigation.

**Coordination with NRC Staff** - This includes Allegation Review Board meetings and results, as well as any information and coordination regarding priority or otherwise which brought the case investigator and FOD to the conclusion that fully developing the case was not warranted.

**Closure Information** - The reason for closing the investigation and returning the matter to the NRC technical staff.

**Supplemental Information** - There may be an optional supplemental information subsection added as appropriate.

**List of Exhibit**. This section lists exhibits in the same manner as a full format ROI. There will routinely be at least two exhibits: the initial ISR and the documentation of the interview with the allegor/cognizant NRC staff person.

#### **F.2. A Fully Developed Investigation which is Unsubstantiated**

Fully developed investigations which are unsubstantiated may be closed on a slightly abbreviated ROI. These reports will basically follow the guidelines for a full format ROI, except the information in the Summary and Evidence subsections is condensed and consolidated (See a sample of such an ROI attached).

#### **F.3. Licensee Investigated and Substantiated Case**

If a preliminary investigation by OI indicates that an allegation already investigated by the licensee is adequate to meet the investigative standards of objectivity, accuracy and thoroughness; than the case can be closed and even referred to DOJ on an abbreviated ROI (Sample attached).

#### **F.4. Collateral Investigations**

In those instances where an OI Field Office is requested to assist another OI office in the conduct of the requesting office's investigation, the receiving office will prepare an abbreviated ROI in accordance with the sample attached to this appendix.

## APPENDIX H

### MEMORANDUM OF UNDERSTANDING BETWEEN THE NUCLEAR REGULATORY COMMISSION AND THE DEPARTMENT OF JUSTICE

#### I. Purpose:

The Nuclear Regulatory Commission (NRC) and the Department of Justice (DOJ) enter into this agreement 1) to provide for coordination of matters that could lead both to enforcement action by the NRC as well as criminal prosecution by DOJ, and 2) to facilitate the exchange of information relating to matters within their respective jurisdictions. This agreement does not affect the procedures and responsibilities set forth in the April 23, 1979, Memorandum of Understanding between the NRC and the Federal Bureau of Investigation regarding cooperation concerning threats, theft, or sabotage in the U.S. nuclear industry. Similarly, this agreement does not apply to those matters arising from internal investigations conducted by the NRC Office of Inspector and Auditor.

This Memorandum of Understanding is not intended to, does not, and may not be relied upon to, create any rights or benefits, substantive or procedural, enforceable at law by a party to litigation with the United States. Nor are any limitations hereby placed on otherwise lawful litigative prerogatives of DOJ.

#### II. Background:

Under federal statutes, the NRC has the responsibility to protect the radiological health and safety of the public, the public interest, the common defense and security, and the environment (hereinafter collectively referred to as public health and safety), from hazards that might arise from the material and facilities which it regulates. The enforcement program of the NRC is designed to fulfill these responsibilities by ensuring compliance with NRC requirements, obtaining prompt correction of violations and adverse conditions affecting safety, encouraging improvement of licensee performance, and deterring future violations. In contrast, criminal prosecutions for willful violations of NRC requirements are the responsibility of the DOJ. Such prosecutions provide an additional tool to assure compliance and to deter future violations. Therefore, it is useful and desirable for the NRC and the DOJ to coordinate to the maximum practicable extent their different responsibilities.

Under the Atomic Energy Act of 1954, as amended, the NRC has the authority to conduct such investigations as it may deem necessary or proper to assist it in determining whether enforcement or other regulatory action is required under the Act, or any regulations, licenses, or orders issued thereunder.

Enforcement actions within NRC authority include license revocations, suspensions and modifications, cease and desist orders, civil penalties, and notices of violation. The NRC has the authority to take such action as it deems



necessary to protect the public health and safety, including the authority, when appropriate, to take immediate action.

The Department of Justice has the responsibility to determine whether to institute criminal prosecution for violations of all federal statutes, including the Atomic Energy Act of 1954, as amended. Such violations are typically developed and brought to the attention of DOJ by law enforcement or investigative agencies, such as Federal Bureau of Investigation, the Postal Inspection Service, and the various Treasury enforcement agencies. Similarly, suspected criminal violations of the Atomic Energy Act, as amended, or Title 18 of the United States Code may be identified during the course of NRC investigations and referred to DOJ for prosecutive determination.

Thus, both the NRC and DOJ have authority and responsibility to investigate and take action for certain violations that may arise out of the same factual matters. Although each agency will carry out its statutory responsibilities independently, the agencies agree that the public health and safety would be enhanced by cooperation and timely consultation on proposed enforcement actions where both civil and criminal violations appear to exist, and by the timely exchange of information of mutual interest. As an example, it may be appropriate in some cases for the NRC to stay its hand pending a criminal prosecution. Conversely, in other cases the public health and safety may require immediate NRC action that could impact a potential criminal prosecution. Both agencies recognize that these enforcement decisions are inherently matters of judgment for each agency to decide for itself, with due regard, however, for the views of the other.

### III. Areas of Cooperation:

#### A. DOJ Notification to NRC of Information Concerning Public Health and Safety

Should DOJ learn of or discover health and safety related information concerning a matter within the jurisdiction of the NRC, and not already reasonably known to the NRC, DOJ shall communicate such information to the NRC as soon as practicable, unless such information is determined by DOJ to be grand jury material. See Rule 6(e) of the Federal Rules of Criminal Procedure.

Should DOJ, during grand jury proceedings, discover health or safety related information concerning a matter within the jurisdiction of the NRC, and not already reasonably known to the NRC, which may warrant immediate regulatory action to protect the public health and safety, DOJ promptly will seek a court order, pursuant to the inherent authority of the court to supervise the grand jury, for disclosure of such information to the NRC for use in connection with its safety enforcement responsibilities.

**B. NRC Notification to DOJ of Suspected Criminal Violations**

If NRC learns of or develops information regarding suspected criminal violations on matters not within the regulatory jurisdiction of the NRC, the NRC will provide the information regarding such suspected criminal violations to the appropriate investigative agency having jurisdiction over the matter.

Should NRC learn of or develop information regarding any suspected criminal violations, including Atomic Energy Act violations, on matters within the regulatory jurisdictions of NRC, it will notify DOJ in the following manner. With respect to matters not involving special circumstances, as described below, the NRC's Director, Office of Investigations (OI), will formally refer the matter to DOJ for prosecutive determination if, on completion of its investigation, the Director, OI, has determined that sufficient evidence has been developed to support a reasonable suspicion that a criminal violation has occurred. Whenever any of the special circumstances listed below occurs, and the Director, OI, has a reasonable suspicion that a criminal violation has occurred, the Director of OI will promptly notify the DOJ of a matter involving such special circumstance(s), notwithstanding the fact that an investigation has not yet been completed by NRC. The special circumstances involve:

- (1) a matter where death or serious bodily injury is involved;
- (2) a matter under investigation which is likely to generate substantial national news media attention;
- (3) a matter where there is evidence of ongoing activity designed to obstruct the investigation;
- (4) a matter which may require extraordinary investigative measures which require legal assistance from DOJ.

When a matter arises in which the NRC concludes that regulatory action is necessary to protect the public health and safety, or that it is necessary to propose a civil penalty, and the Director, Office of Enforcement (OE), has been informed by the Director, OI, that there is a reasonable suspicion that a criminal violation has occurred, the Director of OE will promptly notify the DOJ of such matter, notwithstanding the fact that an investigation has not yet been completed by NRC. Any action by the NRC is to be coordinated with DOJ as prescribed in Section C. below.

Notification to DOJ will not normally result in cessation of the NRC investigation.

**C. Procedure When NRC Regulatory Activities Run Parallel to or May Affect Future DOJ Activity**

NRC regulatory activities with respect to matters that have been referred to DOJ for criminal prosecution, or to which the notification provisions of Section B. apply, shall be coordinated as follows:

1. If the NRC concludes at any time that it lacks reasonable assurance that activities authorized by a license are being conducted without endangering the health and safety of the public and the NRC concludes that immediate action is required to protect the public health, safety, or interest, it will proceed with such action as is necessary to abate the immediate problem. If time permits, the NRC shall notify DOJ of its proposed action prior to acting, but, in any event, shall notify DOJ of its action as soon as practicable. This paragraph shall apply only to those situations that do not allow sufficient time for reasonable consultation.

2. If the NRC concludes that regulatory action is necessary in the public interest, other than the actions described in paragraphs 1 and 3 herein, the NRC shall first consult with DOJ concerning its contemplated action. The NRC shall take into account the views and concerns of DOJ and proceed in a manner that accommodates such views and concerns to the fullest extent possible, consistent with the regulatory action required. Such cooperation at the staff level shall include the seeking of a stay, upon DOJ's request, of discovery and hearing rights during the regulatory proceeding for a reasonable period of time to accommodate the needs of a criminal investigation or prosecution, provided that DOJ supports such action with appropriate affidavits or testimony as requested by the presiding officer.

3. If the NRC concludes that it is necessary to propose a civil penalty, it shall notify DOJ of its contemplated action, and shall defer the initiation of such proceeding until DOJ either concludes its criminal investigation/prosecution or consents to the action, except that if a statute of limitations bar to a civil penalty proceeding is imminent, the NRC may initiate such proceeding after consultation with DOJ. In such event, the NRC staff shall accommodate the needs of DOJ by seeking a stay, upon DOJ's request and with DOJ support as described in paragraph 2 above, of discovery and hearing rights during the civil penalty proceeding for a reasonable period of time.

**D. Time Frame for Notification in Matters Referred to DOJ**

1. If, on completion of its investigation, the NRC concludes that civil enforcement action is appropriate, it will notify DOJ of its contemplated action normally within 45 days of its referral to DOJ.

2. DOJ will notify the NRC, normally within 60 days of the referral, of its preliminary decision as to whether a criminal investigation or prosecution is warranted.

**E. NRC Assistance to DOJ**

The NRC will make reasonable efforts, at DOJ's request, to provide informal assistance regarding applicable NRC requirements, technical issues, and factual circumstances. Such assistance should be requested directly from the Director, Office of Investigations, who will forward requests for technical assistance to the Deputy Executive Director for Regional Operations. A request that one or more

NRC Special Agents be assigned to the DOJ investigation or that NRC technical experts be assigned to assist DOJ and the grand jury should be made in writing. Such requests must bear the signature of a United States Attorney or Deputy Assistant Attorney General, as appropriate. These requests will be considered by NRC on a case-by-case basis.

**F. Exchange of Information Related to Civil or Criminal Enforcement**

Following a DOJ decision not to prosecute a referred case, or at the conclusion of a criminal proceeding, DOJ will provide NRC, upon its request, information not protected from disclosure by Rule 6(e), Fed.R.Crim.P., relevant to the associated civil case. Similarly, NRC will provide information to DOJ, upon its request, on matters being considered by DOJ.

**IV. Implementation:**

The DOJ official responsible for implementation of the notification responsibilities of this agreement is the Chief, General Litigation and Legal Advice Section, Criminal Division; the NRC official responsible for implementation of the notification responsibilities of this agreement with respect to information regarding suspected criminal violations is the Director, Office of Investigations; the NRC official responsible for the notification responsibilities of this agreement with respect to enforcement action is the Director, Office of Enforcement, of the Assistant General Counsel for Enforcement, as appropriate.

**V. Effective Date:**

This agreement is effective when signed by both parties

/S/

Chairman  
U.S. Nuclear Regulatory Commission

Date: 10/88

/S/

Assistant Attorney General  
Criminal Division  
U.S. Department of Justice

Date: 10/88

## APPENDIX I

[EXAMPLE]

(   Name   ), Esq.  
Senior Legal Advisor  
for Regulatory Enforcement  
General Litigation and  
Legal Advice Section  
Criminal Division  
U.S. Department of Justice  
Suite 200 West, 1001 G Street, N.W.  
Washington, DC 20001

Dear (Mr. or Ms.   Name  ):

Enclosed is a report by the NRC Office of Investigations (OI), (Case No.           ) concerning the illegal purchase, transportation, and storage of two measuring gauges, each containing a krypton-85 radioactive source. The alleged violation occurred in the Eastern District of Pennsylvania.

On March 9, 1988, James Jones the owner of Services Consultants (SC) purchased two used Fife gauges with krypton-85 sources for \$8,000 from the Crown Chemical Company (CCC), Potty, Pennsylvania. He then transported these radioactive sources to his Pleasant, Pennsylvania, residence where he stored them in a detached garage until March 1991. Sometime between March and June 1990, he held a discussion with an official of ZIA America, Inc. (ZIA), Atlas, Ohio, to sell one of the sources. Before any sale or transfer to ZIA could take place, the NRC received an anonymous tip about this possible transaction. After Jones and CCC were confronted by NRC inspectors, CCC had the sources properly disposed of on March 11, 1991. Jones acknowledged that he was familiar with NRC regulations when he purchased the gauges, knew that they contained radioactive sources, and was aware that he shouldn't possess, transport or transfer them. It was determined that Jones deliberately violated NRC regulations when he purchased and transported two gauges, containing radioactive sources, from CCC in Potty, Pennsylvania, to his home in Pleasant, Pennsylvania.

The aforementioned actions by Jones constitute a deliberate violation of 10 CFR 30.3. This regulation is issued under Section 161(b) of the Atomic Energy Act (AEA) of 1954, as amended (42 U.S.C. 2201). Section 223(a) of the AEA (42 U.S.C. 2273) makes a willful violation of a regulation which is issued under Section 161(b), (i), or (o) of the AEA a criminal act.

Name          

2

If you have any questions regarding this case, please contact (      Name      ),       Title        
      , OI Field Office, Region       , at 123-999-9999.

Sincerely,

          Name          , Director  
Office of Investigations

Enclosures:  
Report w/exhibits

bcc w/o encl:  
Chairman Dicus  
Commissioner (Name)  
Commissioner (Name)  
Commissioner (Name)  
(Name), DEDE  
(Name), OGC  
(Name), OE  
(Name), NMSS or (Name), NRR  
(Regional Administrator Name), RA:(Insert Region)  
(Field Office Director Name), OI: (Insert Region)

Distribution:  
s/f (Insert Case No.           )  
c/f  
(Report Secretary Name), OI:HQ  
(Field Office Secretary Name), OI:(Insert Region)

To receive a copy of this document, indicate in the box "C" = Copy without attach/encl "E" = Copy with  
attach/encl "N" = No copy

OFFICE	OI:(Region)	OI:(Region)	OI:HQ	OI:HQ
NAME	Special Agent	Field Office Director	Ops Officer	Deputy Director
DATE	00/ /00	00/ /00	00/ /00	00/ /00

OFFICIAL RECORD COPY

**APPENDIX K**

**U. S. NUCLEAR REGULATORY COMMISSION  
OFFICE OF INVESTIGATIONS**

**INTERROGATION/ADVICE OF RIGHTS**

**YOUR RIGHTS**

Place \_\_\_\_\_  
Date \_\_\_\_\_  
Time \_\_\_\_\_

- \* Before we ask you any questions, you must understand your rights.
- \* You have the right to remain silent.
- \* Anything you say can be used against you in court.
- \* You have the right to talk to a lawyer for advice before we ask you any questions and to have a lawyer with you during questioning.
- \* If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.
- \* If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

**WAIVER OF RIGHTS**

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Time: \_\_\_\_\_

**SAMPLE RIGHTS WARNING FORMAT**

## **APPENDIX L**

### **GUIDELINES FOR ADMINISTERING AN OATH OR OBTAINING AN AFFIRMATION**

When the agent determines that the affiant is willing to swear or affirm to the veracity of the information, sworn testimony should be obtained by having the affiant raise his/her right hand. The agent should also raise his/her right hand and say:

"Do you swear" (or "affirm") "that the"

- (1) "statement given by you,"
- (2) "information provided by you," or
- (3) "information you are about to give,"

"is the truth, the whole truth, and nothing but the truth, so help you God?"

An affirmative response validates the oath. Note that the words, "so help you God" are omitted in the case of an affirmation.

The choice of the proper phrase within the oath/affirmation is determined by the following circumstances:

- a. Phrase (1) is used when the affiant provides a written statement.
- b. Phrase (2) is used when the affiant refuses to provide a written statement, but does agree to swear/affirm to the veracity of oral testimony.
- c. Phrase (3) is used when the oath/affirmation is administered at the outset of the interview.

When the affiant provides a written statement, the oath or affirmation is administered after the affiant has read the statement and made necessary corrections, but before the statement is signed. The language in the first parenthetical statement of the Format as shown on the following page is used. If the interviewee is only willing to provide a signed statement, the language in the second parenthetical statement is used. If the interviewee refuses to sign the jurat at the end of the statement, the agent will sign as a witness.

(Sample format on the following page)



**APPENDIX L (CONTINUED)**

**SAMPLE FORMAT FOR JURAT:**

I have read the foregoing statement consisting of \_\_\_\_\_  
handwritten/typed pages. I have made and initialed any necessary  
corrections and have signed my name in ink in the margin of each  
page. I (swear) (declare) that the foregoing statement is true and correct.

Signed on \_\_\_\_\_ at \_\_\_\_\_.  
(date) (time)

\_\_\_\_\_  
Signature and Name (Typed or Printed)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,

19 \_\_, at \_\_\_\_\_.

\_\_\_\_\_  
Special Agent's Signature and Name (Typed or Printed)

\_\_\_\_\_  
Witness' Signature and Name (Typed or Printed)

Title: \_\_\_\_\_

**SAMPLE FORMAT**

**APPENDIX M**

UNITED STATES OF AMERICA  
Nuclear Regulatory Commission  
Office of Investigations

IN THE MATTER OF: NRC INVESTIGATION                      CASE NO.

TO:

*YOU ARE HEREBY COMMANDED*, pursuant to Section 161 (c) of the Atomic Energy Act of 1954, as amended, to appear at

on the     day of     , 1993, at     .m. to testify in the

*YOU ARE FURTHER COMMANDED* to provide the NRC

BY ORDER OF THE DIRECTOR,  
OFFICE OF INVESTIGATIONS  
FIELD OFFICE, REGION

By \_\_\_\_\_

Date \_\_\_\_\_

---

On motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the Commission may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion on just and reasonable terms. Such motion should be directed to the Secretary of the Commission, Washington, DC 20555. Failure to comply with the terms of this subpoena may result in the Commission's seeking judicial enforcement of the subpoena pursuant to Section 233 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2281.

Requested by:

APPENDIX M (CONTINUED)

RETURN

CERTIFICATE OF PERSONAL SERVICE:

I certify that I delivered a copy of this subpoena in hand to:

\_\_\_\_\_

\_\_\_\_\_

on \_\_\_\_\_, 19 \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., at \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

CERTIFICATE OF SERVICE BY MAIL:

I certify that I caused a copy of this subpoena to be mailed by \_\_\_\_\_

\_\_\_\_\_ mail, postage prepaid, to the address specified and with delivery restricted to

the person named thereon on \_\_\_\_\_, 19 \_\_\_\_\_, Receipt No. \_\_\_\_\_.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name and Title)  
Office of Investigations  
U.S. Nuclear Regulatory Commission

~~LIMITED DISTRIBUTION -- NOT FOR PUBLIC DISCLOSURE~~

**STATEMENT**

**Name of Person Interviewed :**

**Address:**

**Location:**

**Telephone:**

**Case No.:**

**Date:**

**Time:**

I, \_\_\_\_\_, hereby make the following voluntary statement to \_\_\_\_\_, who has identified himself/herself to me as an investigator with the U.S. Nuclear Regulatory Commission. I make this statement freely with no threats or promises of reward having been made to me.

**Initials of Person Making Statement**

**Exhibit** \_\_\_\_\_

**Page** \_\_\_\_\_ **of** \_\_\_\_\_

STATEMENT OF \_\_\_\_\_ (CONTINUED)

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper has a slightly textured appearance and some minor blemishes or dust specks. The edges of the paper are slightly irregular.

Exhibit \_\_\_\_\_  
Page \_\_\_\_\_ of \_\_\_\_\_

STATEMENT OF \_\_\_\_\_ (CONTINUED)

**O-3**

**APPENDIX P**

**INTERVIEW REPORT  
WITH (FULL NAME)**

(LAST NAME), (CURRENT TITLE/POSITION) was interviewed on (DATE), at (LOCATION), by (OI/NRC STAFF PERSONNEL INVOLVED IN THE INTERVIEW). (NAME) related the following information in substance:

(FIRST PARAGRAPH SHOULD INCLUDE A HISTORY OF EMPLOYMENT AND/OR EXPERIENCE, AS APPROPRIATE AND IF REQUIRED BY THE CIRCUMSTANCES OF THE INVESTIGATION.)

(SUBSEQUENT REPORT SHOULD RELATE AS ACCURATELY AS POSSIBLE THE ORAL TESTIMONY OF THE INTERVIEWEE.)

(AGENT'S NOTE: AN "AGENT'S NOTE" MAY BE USED TO CLARIFY A POINT OR PROVIDE AN AGENT'S OPINION, WHERE APPROPRIATE.)

This report was prepared on (DATE), from agent's notes.

---

(AGENT'S NAME), Special Agent  
Region      Field Office  
Office of Investigations, USNRC

## **APPENDIX Q**

### **GUIDELINES FOR RESPONDING TO FOIA REQUESTS**

#### **Q.1. Purpose**

Responding to requests for information made in accordance with the Freedom of Information Act (FOIA) is time-consuming and tedious. Nevertheless, it is required that responses are made accurately and in a timely manner. The need for accuracy and timeliness cannot be overstressed during the preparation of the responses to the FOIA. The purpose of these guidelines is to provide a step by step process by which OI in the field and at Headquarters can accomplish such taskings expeditiously.

#### **Q.2 Actions Upon Initial Receipt of a FOIA Request**

**Q.2.1. Direct Requests From An Outside NRC Source.** Any written FOIA request received directly by OI Headquarters (OI:HQ) or a Field Office, from outside the NRC, should be immediately forwarded to the Nuclear Regulatory Commission, Freedom of Information and Local Public Document Room Branch (FOIA/LPDRB), Division of Freedom of Information and Publication Services, Mail Stop T-6 D-8, Washington, D.C. 20555. All oral requesters should be advised to put their requests in writing and forward them to the FOIA Branch. The FOIA Branch accepts only written FOIA requests.

**Q.2.2. Requests Referred To OI From NRC FOIA Branch.** Requests received by OI from the NRC FOIA Branch will be evaluated and processed in accordance with this guidance.

#### **Q.3. Evaluation of FOIA Requests.**

**Q.3.1. Types of Records Involved in FOIA Requests.** There are three types of records addressed in the evaluation and processing of a FOIA Request:

- (a) **Open or ongoing investigations.** Open cases are those cases in which OI is currently engaged in investigative activity. Cases that have been referred to the Department of Justice (DOJ), even though completed and report of investigation issued, are considered ongoing.
- (b) **Closed cases.** Investigations that have been completed and closed by a Report of Investigation or closed administratively.
- (c) **Appeals to denial of records.** The requester questions the validity of the denial and makes an appeal for reconsideration.



**Q.3.2. Headquarters Evaluation.**

- (a) The OI FOIA Specialist is located in OI:HQ. When a FOIA request is received from the FOIA Branch, the OI FOIA Specialist will determine the cognizant field office. A copy of the FOIA request and any other relevant information will be expeditiously forwarded by fax or mail to the Field Office Director.
- (b) There is a 10 working day response time. This time starts when the request is officially logged in by the FOIA Branch, before it is forwarded to OI for processing. This limits the OI response time and must be factored into the OI response process.

**Q.3.3. Field Office Evaluation.**

- (a) Upon receipt and review of the FOIA request, the field office should immediately notify, by telephone or fax, the FOIA Specialist and advise whether or not there are records in the field office files which are responsive to the request.
- (b) This notification should specify if records pertain to open or closed cases, or an appeal. When records relate to closed cases, the field office provides an estimate of the volume of records to be reviewed as well as an estimate of time needed to accomplish a thorough search, review, and the copying of records subject to the request. In circumstances where closed case(s) are being stored in OI:HQ or the NRC warehouse, these records can be retrieved, copied and sent to the field office within a short turn-around time. This delay should be factored into the estimate of time mentioned above.
- (c) Upon completion of the evaluation of the FOIA request and notification to the OI FOIA Specialist, the field offices should not continue to process the FOIA request until instructed to do so by the FOIA Specialist.

**Q.4 Field Office Processing of a FOIA Request**

[The definitions of exemptions used during the processing of FOIA requests are found at paragraph G.6 of this appendix.]

**Q.4.1. Processing of Open Cases.**

- (a) Records that pertain to an open (ongoing) case can be withheld in their entirety pending completion of the ongoing investigation pursuant to Exemption 7(A) and denied to the requester.

- (b) The field office agent and/or FOD should review all records to determine whether an information can be disclosed. Upon completion of review the field office should prepare a Certification of Status, executed by the agent of record and the Field Office Director (signatures of both are required) and forward to the FOIA Specialist.

**Q.4.2. Processing of Closed Cases.**

- (a) Documents which involve issues of confidentiality will be reviewed and redacted by the agent who granted the confidentiality.
- (b) The field office will prepare an inventory list with a complete description of each document, the date of document, the number of pages, and a withholding/releasability determination:
  - (1) Agency records include all materials which were created or obtained during the course of an investigation, or other OI business. This specifically means materials which are relevant to agency affairs, including, as a matter of OI policy, uncirculated notes, logs, or papers which are used to refresh the author's recollections. This also includes documents collected from sources outside of NRC and incorporated into the case files.
  - (2) The description of the document should be worded in a manner such that the list can be released, i.e., "Statement of an Individual", rather than "Statement of John Doe."
  - (3) Copies of memoranda or other internal documents generated by other NRC offices should be provided. However, documents such as Inspection Reports or NUREGs may be simply listed, provided an adequate description is given to enable the FOIA Branch to obtain copies and provided that the copies in the case files do not contain any annotations.
  - (4) Documents in the case files which have been placed in the Public Document Room (PDR) should be included on the inventory list with a notation of their public availability (if known).
  - (5) List recommendations to release or withhold each document or portion thereof. The law and NRC regulations require that any portion of a document which could reasonably be segregated be provided to the FOIA

requester. Therefore, if only a portion of a document is recommended for withholding, that portion should be bracketed in pencil.

- (6) When processing is complete, documents and the inventory list should be forwarded to OI:HQ FOIA Specialist for final processing.

#### **Q.4.3. Processing of Appeals.**

- (a) All records denied under the initial FOIA are re-reviewed in whole or in part, as specified in the appeal.
- (b) Upon completion of the review, the field office should recommend whether or not the records should continue to be withheld in their entirety or in part.
- (c) If it is determined that certain records can now be released under appeal, then the Field Office should prepare an inventory as mentioned in section S.5.2, but include only those records being released. The completed package should be prepared to include documents and the inventory list, then forwarded to OI:HQ FOIA Specialist for final processing.

#### **Q.5. Headquarters Processing of FOIA Requests**

##### **Q.5.1. Processing of Open Cases.**

- (a) Upon receipt of the FOIA request by the FOIA Specialist from the FOIA Branch the cognizant field office is notified by fax, and in some instances by telephone to insure there is an ongoing investigation regarding the FOIA request.
- (b) After review of records in OI:HQ and the confirmation with the field office determines that the request relates to an ongoing investigation, the FOIA Specialist will inform the FOIA Branch by E-mail or telephone that the request relates to an ongoing investigation. Written confirmation by the FOIA Specialist will follow.
- (c) Upon receipt of the form memorandum and Certification of Status from the field office, by fax or mail, the FOIA Specialist prepares a memorandum denying records pursuant to Exemption 7(A) with the Certification of Status and sends the package to the FOIA Branch for immediate denial of records to requester.

- (d) Exemption 7(A) is also applied to all cases that have been referred to the Department of Justice for evaluation. A memorandum and Certification of Status is provided in the same manner.
- (e) Offices proposing to deny information under Exemption 7(A) should send with each recommendation a sound reason why the information could cause "foreseeable harm." When proposing to deny information, only the specific information that would constitute "foreseeable harm" should be exempted from disclosure.

**Q.5.2. Processing of Closed Cases.**

- (a) The FOIA Specialist determines if there are records pertaining to the FOIA request in OI:HQ files while awaiting input from the field office.
- (b) Upon receipt of the field office estimate of the volume of documents and response time for a search, review and copying, the FOIA Specialist will contact the FOIA Branch and inform them of the estimates. Timeliness is important in responding to the FOIA Branch, as it facilitates an appropriate and timely response from the FOIA Branch to the requester.
- (c) After responding to the FOIA Branch, all OI actions concerning the FOIA request are suspended until further notice from the FOIA Branch. The FOIA Branch will contact the requester and advise him/her of the cost of processing the request.
- (d) Upon response from the requester, the FOIA Branch will notify the OI FOIA Specialist to either resume processing the request or close the action as the requester is not interested in pursuing it further.
- (e) If the response is to proceed, the FOIA Specialist will advise the field office to resume processing. The FOIA Specialist will continue the review of any documents in OI:HQ, or forward them if necessary to the field office.
- (f) Upon receipt of the response package from the field office, the FOIA Specialist conducts a full review of all records in their entirety and finalizes all withholding/release determinations in red pen/pencil, making revisions if necessary. These changes are discussed with the Field Office Director and/or OI:HQ management, as necessary. In unusual circumstances, where there are higher priorities at field office level and/or there would

be a severe impact on field office resources, the FOD may request that the OI FOIA Specialist prepare the FOIA package. In order to achieve accuracy and thoroughness, discussions are conducted between the FOIA Specialist, FOIA personnel, field office personnel, OI:HQ personnel, and other offices in NRC. The completed package is then submitted to the FOIA Branch for final disposition.

**Q.5.3. Processing of Appeals.**

- (a) When an appeal is received in OI:HQ, the FOIA Specialist determines if review is to be done at the field office or in OI:HQ.
- (b) All records denied under the initial FOIA are re-reviewed in whole or in part, as specified in the appeal.
- (c) Upon completion of the review, the reviewer recommends whether or not to continue withholding the records in their entirety or in part. Offices proposing to continue to deny information under Exemption 7(A) should send with each recommendation a sound reason why the information could cause "foreseeable harm." When proposing to deny information, only the specific information that would constitute "foreseeable harm" should be exempted from disclosure.
- (d) If it is determined that certain records can now be released under appeal, the reviewer should prepare an inventory as mentioned in section S.5.2, but include only those records being released. The completed package should be prepared to include documents and the inventory list. The package will be forwarded to the OI FOIA Specialist for final processing. In some instances the inventory list is prepared by the FOIA Specialist as a result of a request from the Field Office under circumstances described in paragraph S.5.2.
- (e) Upon completion of review, the FOIA Specialist prepares a memorandum indicating OI determinations. When responding to FOIA appeals, the office response must reflect that the Office Director or designee has personally approved both the decision to withhold each document or portion thereof, and the statement of "foreseeable harm" accompanying the recommendation to withhold. This response is then forwarded to the FOIA Branch for their disposition.

**Q.6 FOIA Exemptions**

**Q.6.1. Exemptions Most Frequently Used By OI For**

Withholding Information.

Exemption 6

Exemption 6 permits an agency to withhold personal and medical files, as well as similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; i.e., names, social security account number, home address, home telephone, date of birth, and radiation exposure.

This exemption is used to delete specific information only when there is a genuine concern for the privacy of the individual.

Exemption 7

Exemption 7 only applies to law enforcement activities. It does not apply to routine inspections or audits.

7(A) Information which could reasonably be expected to interfere with enforcement proceedings.

7(C) Information which could reasonably be expected to constitute an unwarranted invasion of personal privacy.

7(D) Information which could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source.

**Q6.2. Exemptions Least Frequently Used by OI for Withholding Information.**

Exemption 4

Exemption 4 permits an agency to withhold records that are "trade secrets and commercial or financial information obtained from a person and is privileged or confidential."

Exemption 5

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Exemption 5 permits the withholding of predecisional information (drafts and other documents which contain preliminary findings, conclusions, evaluations or recommendations). However, purely factual material which is not predecisional, but is contained within a document which otherwise meets the predecisional criteria, should be segregated for release.

Exemption 7(B)

Exemption 7(B) would apply to information which would deprive a person of a right to a fair trial or an impartial adjudication.

Exemption 7(E)

Exemption 7(E) would apply to information which would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, if such disclosure could reasonably be expected to risk circumvention of the law.

Exemption 7(F)

Exemption 7(F) would apply to information which could reasonably be expected to endanger the life or physical safety of any individual.

Q.7 NEW DEPARTMENT OF JUSTICE POLICY REGARDING FOIA IMPLEMENTATION

On October 4, 1993, President Clinton and Attorney General Janet Reno announced a new Department of Justice (DOJ) policy regarding information denied in response to Freedom of Information Act (FOIA) requests. For your information, the new policy has been interpreted by the NRC as follows:

The DOJ will no longer defend an agency which withholds information unless "foreseeable harm" would result from its disclosure, despite the fact that a valid FOIA exemption could be applied to the information. Specifically, this new policy states that the DOJ is to "defend the assertion of a FOIA exemption only in those cases where the agency reasonably foresees that disclosure would be harmful to an interest protected by that exemption.

Where an item of information might technically or arguably fall within an exemption, it ought not to be withheld from a FOIA requester unless it need be."

In keeping with the NRC Administration' policy, the "foreseeable harm test" should be carefully applied if the office proposes to use Exemption 5 to withhold information that is pre-decisional and deliberative; or to use Exemption 7(A) to withhold information which could interfere with a law enforcement proceeding is disclosed.

Exemption 7 does not allow for a "blanket" withholding of all records relating to a case merely because an investigation is ongoing, but requires that a person knowledgeable about the investigation make an independent determination about each record and decide whether it must be withheld because its disclosure could likely cause some articulable harm. In most cases, it does not seem reasonable to claim that none of the records in a pending investigative file can be disclosed without possibly interfering with the investigation. Normally Exemption 7(A) cannot be used to withhold information submitted by or known to be in the possession of the FOIA requester, such as interviews of the requester or records



obtained directly from the requester, unless a particular rationale can be articulated that, despite the individual's knowledge or possession of this information already, re-disclosure at this time could interfere with the investigative process.

To ensure that each NRC response to an initial request that withhold information complies with this policy's "foreseeable harm" test, offices proposing to deny information must send with each recommendation a sound reason why the information would cause foreseeable harm. When proposing to deny information, only the specific information that would constitute "foreseeable harm" should be exempted from disclosure. A reasonable effort should be made to segregate exempt information from information that can be disclosed as required by the FOIA. In addition, when responding to FOIA appeal, the office response must reflect that the Office Director or designee has personally approved both the decision to withhold each document (or portion thereof) and the statement of "foreseeable harm" accompanying the recommendation to withhold.

[Note: All OI personnel should be aware of the above guidance. However, our current OI FOIA operating procedures, as described in this appendix, are within the parameters outlined in Attorney General Reno's memorandum, and will not change. We should continue to proceed with them.]

## **APPENDIX R**

### **EVIDENCE ACCOUNTABILITY**

#### **I. Preparation and Use of the Evidence and Property Custody Document**

A record is made of all physical evidence on an Evidence/Property Custody Document, regardless of how it is obtained. The agent who first acquires the evidence prepares the NRC Form 404, Evidence/Property Custody Document. This is a manifold form with an original and four copies.

Any change in custody of evidence is recorded in the "Chain of Custody" section of the Evidence/Property Custody Document. Each person who handles or processes physical evidence preserves the integrity of the evidence while it is processed and maintains the chain of custody entries on the original Evidence and Property Custody Document and any copies, as appropriate. When custody of sealed fungible evidence is changed, the "Purpose of Change of Custody" column is notated "Sealed container received, contents not inventoried."

It is the responsibility of the evidence custodian to ensure that the Evidence/Property Custody Document submitted with evidence is correct or to correct any errors, where possible. If errors exist and can not be corrected, such as a missing signature, the evidence custodian should make a memorandum to file noting this discrepancy and attach it to the original evidence document. When evidence is received from another law enforcement agency, the person who first receives it prepares and marks the evidence. Agents who first receive evidence from non-OI law enforcement agencies mark it only if the other agency has not done so and declines to mark it at the time of release to OI. Receipts or chain of custody documents furnished by the other agencies are attached to the NRC Evidence/Property Custody Document, Form 404. Evidence custodians do not breach or inventory the contents of sealed containers of fungible evidence, but notate the "Purpose of Change of Custody" column as specified above.

1. The following guidelines are to assist in the preparation and use of the NRC Form 404 in accordance in conjunction with the attached samples of the first copy of an evidence custody document:

**ROI NUMBER:** Report of Investigation Number.

**DOCKET NUMBER:** This block is used for any number which might prove helpful in later cross-referencing, i.e.: NRC Docket Number, OE Action Number, DOJ Docket Number, FBI Case Number, etc. It may also be left blank or the letters "NA" inserted.

**RECEIVING ACTIVITY:** This is the OI office initially receiving the evidence/property into the custody of OI. Normally this will be the OI field office or, in some instances, OI Headquarters.

**LOCATION:** The city, state and ZIP code of the OI office initially receiving the evidence/property.

**NAME, GRADE AND TITLE OF PERSON FROM WHO RECEIVED**

**(OWNER/OTHER):** This is the full name of the person who releases the evidence/property to OI, if it was received from an individual. If the property is actually owned by this person, then check the OWNER block. If not, as in the case of a records custodian or file clerk, then check the OTHER block. The grade and/or title of the individual should be added where it would be helpful to understand the circumstances of receipt of the property, such as: "President," "Plant Manager," or "Records Custodian." Where items of evidence/property are released to OI by different individuals, separate custody documents are required for items received from each person. Where evidence/property is found by an agent during a search and not received directly from a person, the OTHER block should be checked and an appropriate comment inserted in this section, i.e.: "Found at Scene," "Found during Execution of Search Warrant." Where evidence is initially obtained by an NRC inspector or other NRC employee, the OTHER block should be checked and this person should be treated as an individual releasing evidence into the custody of OI. This same procedure applies when evidence is received from agents of other Federal, State or local law enforcement agencies.

**ADDRESS:** This is the address of the person from whom the evidence was received or the address of the business he/she represents in an official capacity when the evidence was released to OI. Where the evidence was found, this block is marked "NA" and the location where found is elaborated upon in the next block.

**LOCATION FROM WHERE OBTAINED:** If received from an individual, this should indicate, "From the person of \_\_\_\_\_. " Where the evidence/property was found, this should indicate specifically where it was found, i.e.: "File Drawer #56, Records Office, River Road Nuclear Power Plant," "Middle desk drawer, office of John D. Doe," followed in each instance by the address of the power plant or the office of John D. Doe.

**REASON OBTAINED:** This will normally reflect, "Evaluation as evidence," unless the document is being used as a property receipt, rather than an evidence custody document.

**TIME/DATE OBTAINED:** If one or several items are obtained at the same time, only one time is necessary. However, if items are obtained at different times on the same date, as in a search, this block should indicate the range

of time between the first item found and the last, such as: "0530 thru 1430/2-23-99." Items found or received on different dates over an extended search or records review would normally require that a new custody document be prepared for each date.

**ITEM NUMBER/QUANTITY:** In the most basic example, each piece of evidence or property would be considered a separate item number and the quantity would be "one." However, if several like items are released to OI or found at the same time (such as five suspected counterfeit bolts); they may be listed as one item, with a quantity of "five," and placed together in a plastic evidence bag or other appropriate container. Where several items are within one container, and the container, itself, has some evidentiary value or significance (i.e.: an envelop bearing a suspect's handwriting and containing several documents of value as evidence); the envelop could be listed as one item, with the quantity as "one," and a complete description of each document found inside under the DESCRIPTION OF ARTICLES section. (CARE SHOULD BE TAKEN WHEN COMPLETING THESE SECTIONS AND THE "DESCRIPTION OF ARTICLES" SECTION TO PLACE ITEMS WHICH ARE NOT EXPECTED TO STAY TOGETHER OR HAVE SERIOUSLY DISTINCTIVE CHARACTERISTICS UNDER SEPARATE ITEM NUMBERS. IT IS DIFFICULT AND COMPLICATED TO PULL ONE DOCUMENT OUT OF A QUANTITY OF FIVE AND SEND IT TO A LABORATORY FOR EXAMINATION IF ALL FIVE ARE UNDER THE SAME ITEM NUMBER.)

**DESCRIPTION OF ARTICLES:** This description should be in descending order with the most generic descriptive word(s) first, separated by commas, i.e.: Tape recorder, stereo cassette, Zenith, Ser. No. 34567, etc. The description should include model, make, serial number, and condition, where appropriate. It should also include where and how the item is marked for future identification by the receiving agent, i.e.: marked on the metal casing for identification: DDT, 1245, 2-30-99, or marked "DDT/1340/3-12-99,) for identification on the reverse side of the document. Following the description of the last item of evidence/property, the line immediately below should be blocked out in some fashion and the words "LAST ITEM" or "NOTHING FOLLOWS" inserted at the center of the line (See samples).

2. **Chain of Custody.** This portion of the form is, in fact, its major purpose. This document should contain an accurate reflection of each change in the chain of custody with signatures of the releaser and receiver or postal control numbers whenever possible.

**ITEM NO.:** This block contains all item numbers to which the particular change in custody applies, i.e.: 1 only, 1 & 2, 1 thru 5, or 4 and 5 only (See samples).

**DATE:** The date of the change of custody being documented.

**RELEASED BY:** If the evidence/property was initially received from an individual, owner or other, then the first RELEASED BY block will contain this person's name, title and signature. If the person refuses to sign, the name and title are filled in and under the "signature" section, the words: Refused to Sign. If the evidence/property is found, rather than received from a person, the first RELEASED BY block will reflect: Found at Scent, Found during Search, etc. All succeeding RELEASED BY blocks will normally reflect the name, title and signature of the person releasing the item(s). The one exception to this is where an item is received back to the Evidence Custodian through mail channels. In such cases, the RELEASED BY block will reflect the type of mail (Registered, Certified, etc.) and any postal number (See samples). The RECEIVED BY block will contain the signature of the OI person receiving it.

**RECEIVED BY:** The first RECEIVED BY block will always be the name, title and signature of the agent who initially received the evidence/property into OI custody. The second RECEIVED BY block will normally be the name, title and signature of the OI Evidence Custodian who will retain the item(s) as evidence. Succeeding blocks should reflect the name, title and signatures of individuals to whom the Evidence Custodian releases the evidence/property. If an item is sent to a laboratory or elsewhere by mail, the RELEASED BY block will contain the signature of the OI person sending it, and the RECEIVED BY block will reflect the type of mail and the associated postal control number. If the agent who initially receives the item(s) into OI custody also happens to be the assigned Evidence Custodian, it is not necessary to complete a separate set of RELEASED BY/RECEIVED BY blocks. The purpose for change of custody in the first block should merely reflect, "Evaluation and retention as evidence."

**PURPOSE OF CHANGE OF CUSTODY:** This block should contain a very brief and abbreviated description of the purpose for any change of custody, i.e.: "eval and evid," "to evid cust," "to lab for exam," "ret'd from lab," "no longer req as evid."

**LOCATION:** (This is the LOCATION block at the bottom of the front page of the NRC Form 404.) This block is to assist the Evidence Custodian and should indicate the location of the item(s) listed on the custody document within the evidence depository, i.e.: drawer number, safe number, shelf number, etc.

**DOCUMENT NUMBER:** This block is to be used by the Evidence Custodian to indicate the assigned evidence document number.

**NOTE:** CHAIN OF CUSTODY BLOCKS CONTINUE ON THE REVERSE SIDE OF EACH NRC FORM 404.

**FINAL DISPOSAL ACTION:** This section describes final disposition of the evidence/property and must be completed by the Evidence Custodian. It is self-explanatory and requires only brief comments to satisfy the requirements.

**FINAL DISPOSAL AUTHORITY:** This section is also self-explanatory and must be completed by the Field Office Director to give the Evidence Custodian the authority to dispose of evidence no longer required.

**WITNESS TO DESTRUCTION OF EVIDENCE:** Any NRC employee available can serve as a witness. This block should be completed when evidence is destroyed, rather than returned to the owner or other responsible individual/organization.

**[IMPORTANT NOTE: IN ACCORDANCE WITH PARAGRAPH J.1., IT IS THE RESPONSIBILITY OF THE AGENT RECEIVING EVIDENCE INTO OI CUSTODY TO PROPERLY PREPARE THE EVIDENCE/PROPERTY CUSTODY DOCUMENT. HOWEVER, IT IS THE RESPONSIBILITY OF THE EVIDENCE CUSTODIAN TO EXAMINE THE CUSTODY DOCUMENT SUBMITTED WITH EVIDENCE TO ENSURE THAT IT IS CORRECT AND TO CORRECT ANY ERRORS FOUND OR ATTACH A MEMORANDUM TO FILE DESCRIBING THE ERROR WHICH CAN NOT BE CORRECTED.]**

3. **Distribution and Use of Copies of the Evidence/Property Custody Document.** The agent who first acquires the evidence prepares the custody document in an original and four copies. The custody document, NRC Form 404, has an original with four copies separated by carbon paper. These copies should be distributed by either the receiving agent or the Evidence Custodian as follows:

**LAST COPY -** Provided by the agent as a receipt to the individual from whom the evidence is received into OI custody. Normally given by the agent at the time of receipt.

**ORIGINAL -** This copy is placed with the item(s) of evidence, and remains there in whatever cabinet, safe, or on whatever shelf in the evidence depository the evidence is stored. This copy remains with the evidence at all times, even when sent outside the evidence depository, such as to a laboratory for analysis.

**FIRST AND SECOND COPY -** These copies are retained by the Evidence Custodian and placed in the evidence custody document files. [NOTE: If evidence is released outside the evidence depository by the custodian, the original copy of the custody document goes with the evidence. The first and second copies remain in the custody document files and reflect the temporary outside location of the evidence. While away from OI custody,

the "chain of custody" is continued on the original copy accompanying the evidence.]

**THIRD COPY** - The Evidence Custodian provides this copy to the case agent. It is retained in the official OI case file as a record of what evidence was obtained and that it was released to the Evidence Custodian. It should also reflect the assigned evidence document number and the location of the items(s) within the evidence depository. No further chain of custody is necessary on this copy, since it reflects that the evidence is retained by the custodian and the custodian carries the documenting of the chain of custody beyond that point.

## **II. Release of Evidence to the Evidence Custodian**

Except in unusual cases, physical evidence is released to the evidence custodian at the earliest possible time. Evidence acquired during normal nonworking hours is either secured in a temporary container or controlled by the agent pending release to the evidence custodian.

Upon receipt of the evidence and the Evidence/Property Custody Document (NRC Form 404), the evidence custodian assigns a document number. This document number consists of two groups of digits, separated by a hyphen. The first group is the number of the Evidence/Property Custody Document, beginning with the number "001" for the first Evidence/Property Custody Document received for the calendar year; the second group stands for the current calendar year (for example, 001-84). The document number is shown on all copies of the Evidence/Property Custody Document and on the Evidence/Property Tag.

The evidence custodian distributes copies of the Evidence/Property Custody Document, as described above, after the chain of custody is complete and all copies of the form are assigned the document number.

Evidence/Property Custody Document files kept by the evidence custodian contain the original and first copy of the form that pertains to evidence for which the custodian is accountable.

The Evidence/Property Custody Document is put in numbered sequence in a folder. The numbers and years of the documents in the folder are shown on the outside (for example, 001 to 050-84).

After all items of evidence listed on an Evidence/Property Custody Document have been properly disposed of, the evidence custodian retains the original in the evidence voucher file.

### **III. Evidence Ledger**

The Evidence Ledger provides accountability through cross-reference with the Evidence/Property Custody Document. It is normally an accounting type ledger book. It is prepared with six columns that span two facing pages when the book is opened. Both vertical and horizontal lines are used to separate the entries. Blue or black ink should be used to make the entries.

The columns are completed as follows:

**a. Document Number and Date Received:**

The column contains the document number assigned to the Evidence/Property Custody Document. The date the evidence was received by the evidence custodian is entered below this number.

**b. ROI/Docket Number:**

The number assigned to the investigation and the licensee docket number, when appropriate, are entered in this column.

**c. Case Agent's Name**

**d. Brief Description of Evidence:**

A brief description of the evidence is entered in this column. The item number from the Evidence/Property Custody Document is included in this entry. Fungible evidence sealed in a container is briefly described from data on the Evidence/Property Custody Document. This entry does not imply that the evidence custodian has inventoried the items.

**e. Date of Final Disposition:**

The date the evidence was disposed of, as shown in the "Chain of Custody" section of the Evidence/Property Custody Document, is entered in this column. When an Evidence/Property Custody Document contains several items and they are not disposed of on the same date, the date of disposition for each item is shown opposite its description. When all the items in an entry are disposed of on the same date, only one date is entered, followed by the words "all items"; i.e., June 25, 1984--all items.

**f. Final Disposition:**

A brief note on the means of final disposition is entered in this column opposite the item description. When all items in the entry are



disposed of in the same manner, the means of disposal may be listed once, preceded by the words "all items"; i.e., all items returned owner.

g. **Remarks:**

This column may be used to record any information the evidence custodian thinks is necessary. This may include cross-reference to another Evidence/Property Custody Document that contains evidence from the same investigation; names of owners, subjects, agents; notations to show the presence of funds; or the results of laboratory examinations. When fungible evidence is received in a sealed container and is not inventoried, the notation may be made in this column.

An Evidence Ledger is normally completely filled before a new one is started. A small office may use only a few pages per year; therefore, the same Ledger is used for several years.

After the last entry in the Ledger for a calendar year, a statement of which Evidence/Property Custody Document the Ledger pertains to is entered (for example 001 through 035-84). The first entry for the next calendar year begins on the next page.

The cover of the ledger book identifies the organization or activity responsible for the evidence depository and the dates spanned by the entries.

#### **IV Temporary Removal and Final Disposition of Evidence**

Evidence may be removed from the evidence depository only for permanent disposal or for temporary release for specific reasons. The most common reasons for temporary removal are:

- a. transmittal to a laboratory for examination, and
- b. presentation at some form of board, hearing, trial, or other litigation.

The person to whom evidence is released either temporarily or for permanent disposal, signs for it in the "Received by" column of the "Chain of Custody" section. This is done on the original and first copy of the Evidence/Property Custody Document. The person receiving the evidence temporarily must safeguard it and maintain the chain of custody until it is returned to the evidence custodian or disposed of. The evidence custodian releases the first copy Evidence/Property Custody Document to the person who assumes temporary custody, or to first-class registered mail or other transmittal channels, along with the evidence. The evidence custodian retains the original of the Evidence/Property Custody Document in the evidence document file. When the evidence is returned, the original Evidence/Property Custody Document, is

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properly notated by the evidence custodian and the person returning the evidence, and is retained in the evidence document file with the first copy attached. When items on the same Evidence/Property Custody Document must be temporarily released to more than one agency or person at the same time, copies are used and processed as above. A note is made on the original and first copy that copies have been made. The chain of custody for all evidence is recorded on the original of the Evidence/Property Custody Document. Personnel not personally known to the custodian who receive evidence, either on a temporary or a permanent basis, are required to present identification to ensure that evidence is only handled by authorized persons, such as law enforcement, judiciary, or authorized Nuclear Regulatory Commission staff personnel.

When evidence is mailed to a crime laboratory, it is sent by first-class registered mail. The registered mail number is recorded in the "Received By" block on the original of the Evidence/Property Custody Document and the form is retained in the evidence custody file. The first copy of the NRC Form 404 is put inside the package. The recipient notes the proper "Item Number," "Received By," and "Released By" blocks with the item numbers, date, and registered mail number. He then signs for the evidence in the next "Received By" block.

To ensure proper maintenance of the chain of custody, packages contain evidence from only one investigation. A return receipt for registered mail is used when evidence is mailed to the owner for final disposal. When finally disposing of evidence, a photocopy of the Evidence/Property Custody Document is sent with the evidence. When the return receipt for registered mail and the signed copy of the Evidence/Property Custody Document is returned, it is permanently attached to the original Evidence/Property Custody Document and retained in the office evidence files.

Evidence may be sent by means other than registered mail, if proper handling to maintain the chain of custody is assured. It may be hand-carried or shipped on a Government Bill of Lading (GBL). If evidence is shipped by GBL, a copy of the shipping document is obtained and attached to the original copy of the Evidence/Property Custody Document. It is kept there until:

- a. notice is received from the addressee indicating receipt of the evidence, or
- b. the evidence is returned to the evidence custodian.

When evidence is permanently transferred from one evidence custodian to another, the first copy and duplicate custody documents, properly notated, are sent with the evidence. The evidence custodian who receives this evidence commencing a new receiving original manifold Form 404, enters the next document number of the receiving office on both copies. The prior document number is lined through the old first copy voucher, but in such a way that it remains legible.

~~LIMITED DISTRIBUTION -- NOT FOR PUBLIC DISCLOSURE~~

When evidence for judicial proceedings must be mailed, it is sent by first-class registered mail directly to the requesting individual or other agency. The individual or agency returns it to the evidence custodian in the same way.

## **APPENDIX S**

### **NRC ADVISEMENT ON IDENTITY PROTECTION**

This advisement is provided to clarify the degree of protection which can be afforded by the NRC to a concerned citizen making an allegation:

In resolving technical issues, the NRC in protecting your identity intends to take all reasonable efforts to not disclose your identity to any organization, individual outside the NRC, or the public unless:

- You have clearly indicated no objection to being identified.
- Disclosure is necessary because of an overriding safety issue.
- Disclosure is necessary pursuant to an order of a court or NRC adjudicatory authority or to inform Congress or State or Federal agencies in furtherance of NRC responsibilities under law or public trust.
- Disclosure is necessary in furtherance of a wrongdoing investigation, including an investigation of harassment and intimidation (H&I) allegations.
- Disclosure is necessary to support a hearing on an enforcement matter.
- You take actions that are inconsistent with and override the purpose of protecting your identity.

If your allegation is that you have been discriminated against for having raised safety concerns, the NRC will normally disclose your identity during an NRC investigation if you are the victim of the discrimination.

For allegations involving wrongdoing (e.g., record falsification or other deliberate conduct in violation of NRC regulatory requirements), your identity may be disclosed at the NRC's discretion in order to pursue the investigation.

Information provided under the Freedom of Information Act (FOIA) will, to the extent consistent with that act, be purged of names and other potential identifiers; however, disclosures may be necessary under this act.

I \_\_\_\_\_, fully understand the degree of protection of my identity as explained in this document.

Date: \_\_\_\_\_ (Concerned Citizen)

Witness: \_\_\_\_\_

## **APPENDIX T**

### **CONFIDENTIALITY AGREEMENT**

I have information that I wish to provide in confidence to the U.S. Nuclear Regulatory Commission (NRC). I request an express pledge of confidentiality as a condition of providing this information to the NRC.

It is my understanding that consistent with its legal obligations, the NRC, by agreeing to this confidentiality, will adhere to the conditions stated herein.

During the course of an inquiry or investigation, the NRC will make its best effort to avoid actions that would clearly be expected to result in disclosure of my identity.

My identity will be divulged outside the NRC only in the following narrow situations:

- (1) When disclosure is necessary because of an overriding safety issue and I agree to this disclosure. If I can not be reached to obtain my approval or do not agree to disclosure, the NRC staff will contact the Commission for resolution.
- (2) When a court orders such disclosure.
- (3) When required in NRC adjudicatory proceedings by order of the Commission itself.
- (4) In response to a written Congressional request. While such a request will be handled on a case-by-case basis, the request must be in writing and the NRC will make its best efforts to limit the disclosure to the extent possible.
- (5) When requested by a Federal or State agency in furtherance of its statutory responsibilities and the agency agrees to abide by the terms of this confidentiality agreement, and I agree to the release. If I do not agree to the release, my identity may be provided to another agency only in an extraordinary case where the Commission itself finds that furtherance of the public interest requires such release.